

By Representative Lynn

1                                   A bill to be entitled  
2           An act relating to drug-free workplaces;  
3           amending s. 112.0455, F.S.; providing a short  
4           title; providing purposes; providing  
5           legislative findings; amending s. 397.332,  
6           F.S.; providing an additional purpose of the  
7           Office of Drug Control; creating s. 442.01,  
8           F.S.; providing a short title; transferring,  
9           renumbering, and amending ss. 440.101 and  
10          440.102, F.S., relating to drug-free  
11          workplaces; combining and clarifying certain  
12          provisions of ss. 112.0455 and 440.102, F.S.,  
13          relating to drug-free workplace programs;  
14          providing legislative intent; providing for  
15          eligibility for certain rate discounts under  
16          certain circumstances; providing for  
17          ineligibility under certain circumstances;  
18          requiring reporting the identities of certain  
19          insurers; revising definitions; revising and  
20          clarifying provisions relating to drug testing,  
21          notice to employees and job applicants, types  
22          of testing, procedures and employee protection,  
23          confirmation testing, employer protection,  
24          confidentiality, licensure and certification of  
25          drug-testing laboratories, drug-testing  
26          standards for laboratories, rules of the Agency  
27          for Health Care Administration, state employees  
28          in safety-sensitive or special-risk positions,  
29          denial of benefits, discipline and  
30          nondiscipline remedies, collective bargaining  
31          rights, applicability, medical review officers,

1 and license fees; providing for reporting and  
2 accountability standards; providing  
3 requirements for drug-testing laboratory  
4 certification and licensing; requiring  
5 employers to provide education of employees;  
6 requiring final review of drug test results by  
7 a medical review officer; providing criteria;  
8 providing for compliance with federal  
9 regulations; amending s. 627.0915, F.S.;  
10 requiring the Department of Insurance to  
11 approve workers' compensation rating plans  
12 providing a certain rate setting discount;  
13 amending ss. 440.09, 443.101, and 443.1715,  
14 F.S., to conform cross references; amending s.  
15 14, ch. 99-240, Laws of Florida; deleting the  
16 repeal of chapter 442, F.S.; retaining the  
17 repeal of the sections of chapter 442, F.S.;  
18 correcting an incorrect section reference;  
19 providing effective dates.

20  
21 Be It Enacted by the Legislature of the State of Florida:

22  
23 Section 1. Section 112.0455, Florida Statutes, is  
24 amended to read:

25 (Substantial rewording of section.

26 See s. 112.0455, F.S., for existing text.)

27 112.0455 Drug-free workplaces.--

28 (1) SHORT TITLE.--Sections 442.02 and 440.03 may be  
29 cited as the "Florida Government Drug-Free Workplace Act."

30 (2) PURPOSE.--This section is intended to:

31

1       (a) Promote the goal of drug-free workplaces within  
2 all levels of state government through fair and reasonable  
3 drug-testing methods for the protection of public employees  
4 and employers.

5       (b) Encourage state government to provide employees  
6 who have drug use problems with an opportunity to participate  
7 in an employee assistance program or an alcohol and drug  
8 rehabilitation program.

9       (3) FINDINGS.--The Legislature finds that:

10       (a) Drug use has serious adverse effects upon a  
11 significant portion of the workforce, resulting in billions of  
12 dollars of lost productivity each year and posing a threat to  
13 the workplace and to public safety and security.

14       (b) Maintaining a healthy and productive workforce,  
15 safe working conditions free from the effects of drugs, and  
16 quality products and services is important to governmental  
17 employers and employees and the general public in this state.  
18 The Legislature further finds that drug use creates a variety  
19 of workplace problems, including increased injury on the job,  
20 increased absenteeism, increased financial burden on health  
21 and benefit programs, increased workplace theft, decreased  
22 employee morale, decreased productivity, and a decline in the  
23 quality of products and services offered by state government.

24       (c) Implementation of a drug-free workplace program is  
25 necessary to protect government employers and employees who  
26 participate in workplace drug-testing programs.

27       (d) In balancing the interests of state government  
28 employers and employees and the welfare of the general public,  
29 the establishment of standards to ensure fair and accurate  
30 testing for drugs in the workplace is in the best interest of  
31 all.

1       (e) For the protection of and fairness to the state,  
2 state employees, and job applicants, the collection and  
3 testing of specimens and the reporting of such testing not  
4 performed pursuant to s. 442.03 and rules adopted under such  
5 section shall not be used for the purposes of s. 442.03.

6       (3) Any drug-free workplace established by an agency  
7 of this state must comply with the requirements of s. 442.03.

8       Section 2. Paragraph (h) is added to subsection (2) of  
9 section 397.332, Florida Statutes, to read:

10       397.332 Office of Drug Control.--

11       (2) The purpose of the Office of Drug Control is to  
12 work in collaboration with the Office of Planning and  
13 Budgeting to:

14       (h) Serve as an umbrella agency to ensure coordination  
15 among the agencies or departments which are responsible for  
16 implementing the drug-free workplace provisions of ss. 442.02  
17 and 442.03.

18       Section 3. Section 442.01, Florida Statutes, is  
19 created to read:

20       442.01 Drug-Free Workplace Act.--Sections 442.02 and  
21 442.03 may be cited as the "Florida Government Drug-Free  
22 Workplace Act."

23       Section 4. Sections 440.101 and 440.102, Florida  
24 Statutes, are transferred and renumbered as sections 442.02  
25 and 442.03, Florida Statutes, respectively, and amended to  
26 read:

27       442.02 ~~440.101~~ Legislative intent; drug-free  
28 workplaces.--

29       (1) It is the intent of the Legislature to promote  
30 drug-free workplaces in order that all employers in the state  
31 be afforded the opportunity to maximize ~~their~~ levels of

1 productivity, enhance ~~their~~ competitive positions in the  
2 marketplace, and reach ~~their~~ desired levels of success without  
3 experiencing the costs, delays, and tragedies associated with  
4 work-related accidents resulting from drug abuse by employees.  
5 It is further the intent of the Legislature that drug abuse be  
6 discouraged and that employees who choose to engage in drug  
7 abuse face the risk of unemployment and the forfeiture of  
8 workers' compensation benefits provided under chapter 440 and  
9 unemployment compensation benefits provided under chapter 443.

10 (2) If an employer implements a drug-free workplace  
11 program in accordance with s. 442.03 ~~440.102~~ which includes  
12 notice, education, and procedural requirements for testing for  
13 drugs and alcohol pursuant to law or to rules adopted under s.  
14 442.03 ~~developed by the Agency for Health Care Administration,~~  
15 the employer may require the employee to submit to a test for  
16 the presence of drugs ~~or alcohol~~ and, if a drug ~~or alcohol~~ is  
17 found to be present in the employee's system at a level  
18 prescribed by rule adopted pursuant to this act, the employee  
19 may be terminated and may forfeit ~~forfeits~~ his or her  
20 eligibility for medical and indemnity benefits provided by the  
21 employer under chapter 440 and unemployment compensation  
22 benefits under chapter 443. However, a drug-free workplace  
23 program must require the employer to notify all employees that  
24 it is a condition of employment for an employee to refrain  
25 from reporting to work or working with the presence of drugs  
26 ~~or alcohol~~ in his or her body and, if an injured employee  
27 refuses to submit to a test for drugs ~~or alcohol~~, the employee  
28 forfeits eligibility for medical and indemnity benefits.

29 (3) An employer which has established and maintains a  
30 drug-free workplace program in accordance with s. 442.03 is  
31 eligible to qualify for the discounts provided under s.

1 627.0915. An employer who fails to maintain a drug-free  
2 workplace in accordance with s. 442.03 and rules adopted under  
3 such section is not eligible for the discounts under s.  
4 627.0915. The identity of all employers qualifying for and  
5 receiving discounts provided under s. 627.0915 shall be  
6 reported annually by the insurer to the division as prescribed  
7 by the division.

8 442.03 ~~440.102~~ Drug-free workplace program  
9 requirements.--The following provisions apply to a drug-free  
10 workplace program implemented pursuant to law or to rules  
11 adopted by the Agency for Health Care Administration for  
12 collecting and testing specimens for drugs:

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

15 (a) "Certified laboratory" means a drug-free workplace  
16 laboratory certified by the Federal Substance Abuse and Mental  
17 Health Services Administration (SAMHSA).

18 (b)~~(a)~~ "Chain of custody" refers to the methodology of  
19 tracking specified materials or substances for the purpose of  
20 maintaining control and accountability from initial collection  
21 to final disposition for all such materials or substances and  
22 providing for accountability at each stage in handling,  
23 testing, and storing specimens and reporting test results.

24 (c)~~(b)~~ "Confirmation test," "confirmed test," or  
25 "confirmed drug test" means a second analytical procedure used  
26 to identify the presence of a specific drug or metabolite in a  
27 specimen. The confirmation, which test must be different in  
28 scientific principle from that of the initial test procedure  
29 and must be capable of providing requisite specificity,  
30 sensitivity, and quantitative accuracy or shall consist of a  
31 more accurate scientifically accepted method approved by the

1 Department of Health and Human Services Mandatory Guidelines  
2 for Federal Workplace Drug Testing Programs as contained in  
3 Volume 54, Number 110, of the Federal Register published June  
4 9, 1994, and, for alcohol testing, the Department of  
5 Transportation Federal Motor Carrier Safety Regulations Part  
6 40.

7 (d) "Division" means the Division of Workers'  
8 Compensation of the Department of Labor and Employment  
9 Security.

10 (e)(c) "Drug" means alcohol, including a distilled  
11 spirit, wine, a malt beverage, or an intoxicating liquor; an  
12 amphetamine; a cannabinoid; cocaine; phencyclidine (PCP); ~~a~~  
13 ~~hallucinogen; methaqualone;~~ an opiate; a barbiturate; a  
14 benzodiazepine; propoxyphene ~~a synthetic narcotic~~; a designer  
15 drug; or a metabolite of any of the substances listed in this  
16 paragraph. An employer may test an individual for any or all  
17 of such drugs.

18 (f)(d) "Drug rehabilitation program" means a service  
19 provider, established pursuant to s. 397.311(28), that  
20 provides confidential, timely, and expert identification,  
21 assessment, and resolution of employee drug abuse.

22 (g)(e) "Drug test" or "test" means any chemical,  
23 biological, or physical instrumental analysis administered, by  
24 a laboratory certified by the United States Department of  
25 Health and Human Services or licensed by the Agency for Health  
26 Care Administration as provided in subsection (9), for the  
27 purpose of determining the presence or absence of a drug or  
28 its metabolites.

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

31

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

12           (j)~~(h)~~ "Employer" means a person or entity that  
13 employs a person and that is covered by the Workers'  
14 Compensation Law.

15           (k)~~(i)~~ "Initial drug test" means a sensitive, rapid,  
16 and reliable procedure to identify negative and presumptive  
17 positive specimens, using an immunoassay procedure or an  
18 equivalent, or a more accurate scientifically accepted method  
19 approved by the United States Department of Health and Human  
20 Services Mandatory Guidelines for Federal Workplace Drug  
21 Testing Programs as contained in Volume 54, Number 110, of the  
22 Federal Register published June 9, 1994, and, for alcohol  
23 testing, the Department of Transportation Federal Motor  
24 Carrier Safety Regulations Part 40 ~~Food and Drug~~  
25 ~~Administration or the Agency for Health Care Administration as~~  
26 ~~such more accurate technology becomes available in a~~  
27 ~~cost-effective form.~~

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



1 For a state agency ~~public employer~~, "job applicant" may mean  
2 ~~means only~~ a person who has applied for a special-risk or  
3 safety-sensitive position.

4 (m) "Licensed laboratory" means a drug-free workplace  
5 laboratory licensed by the Agency for Health Care  
6 Administration pursuant to this section.

7 (n)~~(k)~~ "Medical review officer" or "MRO" means a  
8 licensed physician, employed with or contracted with an  
9 employer, who is certified in the law and methodology of drug  
10 testing;who has knowledge of substance abuse disorders,  
11 laboratory testing procedures, and chain of custody collection  
12 procedures; who verifies positive, confirmed test results; and  
13 who has the necessary medical training to interpret and  
14 evaluate an employee's positive test result in relation to the  
15 employee's medical history or any other relevant biomedical  
16 information.

17 (o)~~(l)~~ "Prescription or nonprescription medication"  
18 means a drug or medication obtained pursuant to a prescription  
19 as defined by s. 893.02 or a medication that is authorized  
20 pursuant to federal or state law for general distribution and  
21 use without a prescription in the treatment of human diseases,  
22 ailments, or injuries.

23 (p)~~(m)~~ "Public employer" means any agency within  
24 state, county, or municipal government that employs  
25 individuals for a salary, wages, or other remuneration.

26 (q)~~(n)~~ "Reasonable-suspicion drug testing" means drug  
27 testing based on a belief that an employee is using or has  
28 used drugs in violation of the employer's policy drawn from  
29 specific objective and articulable facts and reasonable  
30 inferences drawn from those facts in light of experience.

31

1 ~~Among other things,~~Such facts and inferences may be based  
2 upon, but are not limited to:

- 3 1. Observable phenomena while at work, such as direct  
4 observation of drug use or of the physical symptoms or  
5 manifestations of being under the influence of a drug.
- 6 2. Abnormal conduct or erratic behavior while at work  
7 or a significant deterioration in work performance.
- 8 3. A report of drug use, provided by a reliable and  
9 credible source.
- 10 4. Evidence that an individual has tampered with a  
11 drug test during his or her employment with the current  
12 employer.
- 13 5. Information that an employee has caused,  
14 contributed to, or been involved in an accident while at work.
- 15 6. Evidence that an employee has used, possessed,  
16 sold, solicited, or transferred drugs while working or while  
17 on the employer's premises or while operating the employer's  
18 vehicle, machinery, or equipment.

19 (r)~~(o)~~ "Safety-sensitive position" means, ~~with respect~~  
20 ~~to a public employer,~~a position in which a drug impairment  
21 constitutes an immediate and direct threat to public health or  
22 safety, such as a position that requires the employee to carry  
23 a firearm, perform life-threatening procedures, work with  
24 confidential information or documents pertaining to criminal  
25 investigations, or work with controlled substances; a position  
26 in which a drug impairment constitutes an immediate and direct  
27 threat to the employee's health or safety; a position in which  
28 the employee is responsible for the well-being of a minor; a  
29 position subject to s. 110.1127; or a position in which a  
30 momentary lapse in attention could result in injury or death  
31 to another person.

1        (s)~~(p)~~ "Special-risk position" means, with respect to  
2 a public employer, a position that is required to be filled by  
3 a person who is certified under chapter 633 or chapter 943.

4        (t)~~(c)~~ "Specimen" means tissue, hair, or a product of  
5 the human body capable of revealing the presence of drugs or  
6 their metabolites, as approved by the United States Department  
7 of Health and Human Services Mandatory Guidelines for Federal  
8 Workplace Drug Testing Programs as contained in Volume 54,  
9 Number 110, of the Federal Register published June 9, 1994,  
10 and, for alcohol testing, the Department of Transportation  
11 Federal Motor Carrier Safety Regulations Part 40 ~~Food and Drug~~  
12 Administration or the Agency for Health Care Administration.

13        (2) DRUG TESTING.--An employer may test an employee or  
14 job applicant for any drug described in paragraph (1)(c). In  
15 order to qualify as having established a certified state  
16 drug-free workplace program,~~which affords an employer the~~  
17 ~~ability to qualify for the discounts provided under s.~~  
18 ~~627.0915 and deny medical and indemnity benefits, under this~~  
19 ~~chapter all drug testing conducted by employers shall be in~~  
20 ~~conformity with the standards and procedures established in~~  
21 ~~this section and all applicable rules adopted pursuant to this~~  
22 ~~section. However, an employer does not have a legal duty under~~  
23 ~~this section to request an employee or job applicant to~~  
24 ~~undergo drug testing. If an employer fails to maintain a~~  
25 ~~drug-free workplace program in accordance with the standards~~  
26 ~~and procedures established in this section and in applicable~~  
27 ~~rules, the employer shall not be eligible for discounts under~~  
28 ~~s. 627.0915. All employers qualifying for and receiving~~  
29 ~~discounts provided under s. 627.0915 must be reported annually~~  
30 ~~by the insurer to the division.~~

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

- 1 (a) One time only, prior to testing, an employer shall  
2 give all employees and job applicants for employment a written  
3 policy statement which contains:
- 4 1. A general statement of the employer's policy on  
5 employee drug use, which must identify:
- 6 a. The types of drug testing an employee or job  
7 applicant may be required to submit to, including  
8 reasonable-suspicion drug testing or drug testing conducted on  
9 any other basis.
- 10 b. The actions the employer may take against an  
11 employee or job applicant on the basis of a positive confirmed  
12 drug test result.
- 13 2. A statement advising the employee or job applicant  
14 of the existence of this section.
- 15 3. A general statement concerning confidentiality.
- 16 4. Procedures for employees and job applicants to  
17 confidentially report to a medical review officer the use of  
18 prescription or nonprescription medications to a medical  
19 review officer both before and after being tested.
- 20 5. A list of the most common medications, by brand  
21 name or common name, as applicable, as well as by chemical  
22 name, which may alter or affect a drug test. A list of such  
23 medications as developed by the Agency for Health Care  
24 Administration shall be available to employers through the  
25 Division of Workers' Compensation of the Department of Labor  
26 and Employment Security.
- 27 6. The consequences of refusing to submit to a drug  
28 test.
- 29 7. A representative sampling of names, addresses, and  
30 telephone numbers of employee assistance programs and local  
31 drug rehabilitation programs.

1           8. A statement that an employee or job applicant who  
2 receives a positive confirmed test result may contest or  
3 explain the result to the medical review officer within 5  
4 working days after receiving ~~written~~ notification of the test  
5 result; that if an employee's or job applicant's explanation  
6 or challenge is unsatisfactory to the medical review officer,  
7 the medical review officer shall report a positive test result  
8 back to the employer; and that a person may contest the drug  
9 test result pursuant to law ~~or to rules adopted by the Agency~~  
10 ~~for Health Care Administration.~~

11           9. A statement informing the employee or job applicant  
12 of his or her responsibility to notify the laboratory of any  
13 administrative or civil action brought pursuant to this  
14 section.

15           10. A list of all drugs for which the employer may  
16 ~~will~~ test, described by brand name or common name, as  
17 applicable, ~~as well as by chemical name.~~

18           11. A statement regarding any applicable collective  
19 bargaining agreement or contract and the right to appeal to  
20 the Public Employees Relations Commission or applicable court.

21           12. A statement notifying employees and job applicants  
22 of their right to consult with a medical review officer for  
23 technical information regarding prescription or  
24 nonprescription medication.

25           (b) An employer not having a drug-testing program  
26 shall ensure that at least 60 days elapse between a general  
27 one-time notice to all employees that a drug-testing program  
28 is being implemented and the beginning of actual drug testing.  
29 An employer having a drug-testing program in place prior to  
30 October 1, 2000 ~~July 1, 1990~~, is not required to provide a  
31 60-day notice period.

1 (c) An employer shall include notice of drug testing  
2 on vacancy announcements for positions for which drug testing  
3 is required. A notice of the employer's intent to test for  
4 drugs ~~drug testing policy~~ must also be posted in an  
5 appropriate and conspicuous location on the employer's  
6 premises, and copies of the policy must be made available for  
7 inspection by the employees or job applicants of the employer  
8 during regular business hours in the employer's personnel  
9 office or other suitable locations.

10 (4) TYPES OF TESTING.--

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

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

17 2. Reasonable-suspicion drug testing.--An employer  
18 must require an employee to submit to reasonable-suspicion  
19 drug testing.

20 3. Routine fitness-for-duty drug testing.--An employer  
21 must require an employee to submit to a drug test if the test  
22 is conducted as part of a routinely scheduled employee  
23 fitness-for-duty medical examination that is part of the  
24 employer's established policy or that is scheduled routinely  
25 for all members of an employment classification or group.

26 4. Followup drug testing.--If the employee in the  
27 course of employment enters an employee assistance program for  
28 drug-related problems, or a drug rehabilitation program, the  
29 employer must require the employee to submit to a drug test as  
30 a followup to such program, unless the employee voluntarily  
31 entered the program. In those cases, the employer has the

1 option to not require followup testing. If followup testing is  
2 required, it must be conducted at least once a year for a  
3 2-year period after completion of the program. Advance notice  
4 of a followup testing date must not be given to the employee  
5 to be tested.

6 5. Postaccident testing.--If, in the course of  
7 employment, the employee suffers an accident for which the  
8 employee is treated by a physician, the employer must require  
9 the employee to submit to a drug test as a consequence of such  
10 accident.

11 (b) This subsection does not preclude an ~~a private~~  
12 employer from conducting random testing, or any other lawful  
13 testing, of employees for drugs.

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

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

21 (a) A sample shall be collected with due regard to the  
22 privacy of the individual providing the sample, and in a  
23 manner reasonably calculated to prevent substitution or  
24 contamination of the sample.

25 (b) Specimen collection must be documented, and the  
26 documentation procedures shall include:

27 1. Labeling of specimen containers so as to reasonably  
28 preclude the likelihood of erroneous identification of test  
29 results.

30 2. A form for the employee or job applicant to provide  
31 any information he or she considers relevant to the test,

1 including identification of currently or recently used  
2 prescription or nonprescription medication or other relevant  
3 medical information. The form must provide notice of the most  
4 common medications by brand name or common name, as  
5 applicable, ~~as well as by chemical name~~, which may alter or  
6 affect a drug test. The providing of information shall not  
7 preclude the administration of the drug test, but shall be  
8 taken into account in interpreting any positive confirmed test  
9 result.

10 (c) Specimen collection, storage, and transportation  
11 to the testing site shall be performed in a manner that  
12 reasonably precludes contamination or adulteration of  
13 specimens.

14 (d) Each initial drug test and confirmation test  
15 conducted under this section, not including the taking or  
16 collecting of a specimen to be tested, shall be conducted by a  
17 licensed or certified laboratory as described in subsection  
18 (10)~~(9)~~.

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

21 1. A physician, a physician assistant, a registered  
22 professional nurse, a licensed practical nurse, or a nurse  
23 practitioner or a certified paramedic who is present at the  
24 scene of an accident for the purpose of rendering emergency  
25 medical service or treatment.

26 2. A qualified person employed by or contracted by a  
27 licensed or certified laboratory as described in subsection  
28 (10) or an independent contractor or designee of such  
29 contractor who has knowledge, training, and experience in  
30 collecting such specimens~~(9)~~.

31



1           (f) A person who collects or takes a specimen for a  
2 drug test shall collect an amount sufficient for two drug  
3 tests as determined by the Agency for Health Care  
4 Administration.

5           (g) Every specimen that produces a positive, confirmed  
6 test result shall be preserved by the licensed or certified  
7 laboratory that conducted the confirmation test for a period  
8 of at least 210 days after the result of the test was mailed  
9 or otherwise delivered to the medical review officer. However,  
10 if an employee or job applicant undertakes an administrative  
11 or legal challenge to the test result, the employee or job  
12 applicant shall notify the laboratory and the sample shall be  
13 retained by the laboratory until the case or administrative  
14 appeal is settled. During the 180-day period after written  
15 notification of a positive test result, the employee or job  
16 applicant who has provided the specimen shall be permitted by  
17 the employer to have a portion of the specimen retested, at  
18 the employee's or job applicant's expense, at another  
19 laboratory, licensed ~~and approved~~ by the Agency for Health  
20 Care Administration pursuant to subsection (9) or certified by  
21 the United States Department of Health and Human Services,  
22 chosen by the employee or job applicant. The second laboratory  
23 must test at equal or greater sensitivity for the drug in  
24 question as the first laboratory. The first laboratory that  
25 performed the test for the employer is responsible for the  
26 transfer of the portion of the specimen to be retested, and  
27 for the integrity of the chain of custody during such  
28 transfer.

29           (h) Within 5 working days after receipt of a positive  
30 confirmed test result from the medical review officer, an  
31 employer shall inform an employee or job applicant in writing

1 of such positive test result, the consequences of such  
2 results, and the options available to the employee or job  
3 applicant. The employer shall provide to the employee or job  
4 applicant, upon request, a copy of the test results.

5 (i) Within 5 working days after receiving notice of a  
6 positive confirmed test result, an employee or job applicant  
7 may submit information to the employer explaining or  
8 contesting the test result, and explaining why the result does  
9 not constitute a violation of the employer's policy.

10 (j) If the employee's or job applicant's explanation  
11 or challenge of the positive test result is unsatisfactory to  
12 the employer, a written explanation as to why the employee's  
13 or job applicant's explanation is unsatisfactory, along with  
14 the report of positive result, shall be provided by the  
15 employer to the employee or job applicant upon written request  
16 of the employee or applicant within 5 days after the  
17 employer's final notification of a positive result; and all  
18 such documentation shall be kept confidential by the employer  
19 pursuant to subsection (8) and shall be retained by the  
20 employer for at least 1 year.

21 (k) An employer may not discharge, discipline, refuse  
22 to hire, discriminate against, or request or require  
23 rehabilitation of an employee or job applicant on the sole  
24 basis of a positive test result that has not been verified by  
25 a confirmation test and by a medical review officer.

26 (l) An employer that performs drug testing or specimen  
27 collection shall use chain-of-custody procedures established  
28 by rule by the Agency for Health Care Administration to ensure  
29 proper recordkeeping, handling, labeling, and identification  
30 of all specimens tested.

31

1 (m) An employer shall pay the cost of all drug tests,  
2 initial and confirmation, which the employer requires of  
3 employees. An employee or job applicant shall pay the costs  
4 of any additional drug tests not required by the employer.

5 (n) An employer shall not discharge, discipline, or  
6 discriminate against an employee solely upon the employee's  
7 voluntarily seeking treatment, while under the employ of the  
8 employer, for a drug-related problem if the employee has not  
9 previously tested positive for drug use, entered an employee  
10 assistance program for drug-related problems, or entered a  
11 drug rehabilitation program. Unless otherwise provided by a  
12 collective bargaining agreement, an employer may select the  
13 employee assistance program or drug rehabilitation program if  
14 the employer pays the cost of the employee's participation in  
15 the program.

16 (o) If drug testing is conducted based on reasonable  
17 suspicion, the employer shall promptly detail in writing the  
18 circumstances which formed the basis of the determination that  
19 reasonable suspicion existed to warrant the testing. A copy of  
20 this documentation shall be given to the employee upon request  
21 and the original documentation shall be kept confidential by  
22 the employer pursuant to subsection (8) and shall be retained  
23 by the employer for at least 1 year.

24 (p) All authorized remedial treatment, care, and  
25 attendance provided by a health care provider to an injured  
26 employee before medical and indemnity benefits are denied  
27 under this section must be paid for by the carrier or  
28 self-insurer. However, the carrier or self-insurer must have  
29 given reasonable notice to all affected health care providers  
30 that payment for treatment, care, and attendance provided to  
31 the employee after a future date certain will be denied. A

1 health care provider, as defined in s. 440.13(1)(i), that  
2 refuses, without good cause, to continue treatment, care, and  
3 attendance before the provider receives notice of benefit  
4 denial commits a misdemeanor of the second degree, punishable  
5 as provided in s. 775.082 or s. 775.083.

6 (6) CONFIRMATION TESTING.--

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

9 (a)~~(b)~~ Only licensed or certified laboratories as  
10 described in subsection (10)~~(9)~~ may conduct confirmation drug  
11 tests.

12 (b)~~(c)~~ All positive initial tests shall be confirmed  
13 using gas chromatography/mass spectrometry (GC/MS) or an  
14 equivalent or more accurate scientifically accepted method  
15 ~~approved by the Agency for Health Care Administration or the~~  
16 ~~United States Food and Drug Administration as such technology~~  
17 ~~becomes available in a cost-effective form.~~

18 (c)~~(d)~~ If an initial drug test of an employee or job  
19 applicant is confirmed as positive, the employer's medical  
20 review officer shall provide technical assistance to the  
21 employer and to the employee or job applicant for the purpose  
22 of interpreting the test result to determine whether the  
23 result could have been caused by prescription or  
24 nonprescription medication taken by the employee or job  
25 applicant.

26 (7) EMPLOYER PROTECTION.--

27 (a) An employee or job applicant whose drug test  
28 result is confirmed as positive in accordance with this  
29 section shall not, by virtue of the result alone, be deemed to  
30 have a "handicap" or "disability" as defined under federal,  
31 state, or local handicap and disability discrimination laws.

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

5           (c) No physician-patient relationship is created  
6 between an employee or job applicant and an employer or any  
7 person performing or evaluating a drug test, solely by the  
8 establishment, implementation, or administration of a  
9 drug-testing program.

10          (d) Nothing in this section shall be construed to  
11 prevent an employer from establishing reasonable work rules  
12 related to employee possession, use, sale, or solicitation of  
13 drugs, including convictions for drug-related offenses, and  
14 taking action based upon a violation of any of those rules.

15          (e) This section does not operate retroactively, and  
16 does not abrogate the right of an employer under state law to  
17 conduct drug tests, or implement employee drug-testing  
18 programs; however, only those programs that meet the criteria  
19 outlined in this section qualify for reduced rates under s.  
20 627.0915.

21          (f) If an employee or job applicant refuses to submit  
22 to a drug test, the employer is not barred from discharging or  
23 disciplining the employee or from refusing to hire the job  
24 applicant. However, this paragraph does not abrogate the  
25 rights and remedies of the employee or job applicant as  
26 otherwise provided in this section.

27          (g) This section does not prohibit an employer from  
28 conducting medical screening or other tests required,  
29 permitted, or not disallowed by any statute, rule, or  
30 regulation for the purpose of monitoring exposure of employees  
31 to toxic or other unhealthy substances in the workplace or in

1 the performance of job responsibilities. Such screening or  
2 testing is limited to the specific substances expressly  
3 identified in the applicable statute, rule, or regulation,  
4 unless prior written consent of the employee is obtained for  
5 other tests. Such screening or testing need not be in  
6 compliance with the rules adopted by the Agency for Health  
7 Care Administration under this chapter ~~or under s. 112.0455~~. A  
8 public employer may, through the use of an unbiased selection  
9 procedure, conduct random drug tests of employees occupying  
10 safety-sensitive or special-risk positions if the testing is  
11 performed in accordance with drug-testing rules adopted by the  
12 Agency for Health Care Administration and the Department of  
13 Labor and Employment Security. If applicable, random drug  
14 testing must be specified in a collective bargaining agreement  
15 as negotiated by the appropriate certified bargaining agent  
16 before such testing is implemented.

17 (h) No cause of action shall arise in favor of any  
18 person based upon the failure of an employer to establish a  
19 program or policy for drug testing.

20 (8) CONFIDENTIALITY.--

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

31

1           (b) Employers, laboratories, medical review officers,  
2 employee assistance programs, drug rehabilitation programs,  
3 and their agents may not release any information concerning  
4 drug test results obtained pursuant to this section without a  
5 written consent form signed voluntarily by the person tested,  
6 unless such release is compelled by an administrative law  
7 judge, a hearing officer, or a court of competent jurisdiction  
8 pursuant to an appeal taken under this section or is deemed  
9 appropriate by a professional or occupational licensing board  
10 in a related disciplinary proceeding. The consent form must  
11 contain, at a minimum:

- 12           1. The name of the person who is authorized to obtain  
13 the information.
- 14           2. The purpose of the disclosure.
- 15           3. The precise information to be disclosed.
- 16           4. The duration of the consent.
- 17           5. The signature of the person authorizing release of  
18 the information.

19           (c) Information on drug test results shall not be used  
20 in any criminal proceeding against the employee or job  
21 applicant. Information released contrary to this section is  
22 inadmissible as evidence in any such criminal proceeding.

23           (d) This subsection does not prohibit an employer,  
24 agent of an employer, or laboratory conducting a drug test  
25 from having access to employee drug test information or using  
26 such information when consulting with legal counsel in  
27 connection with actions brought under or related to this  
28 section or when the information is relevant to its defense in  
29 a civil or administrative matter.

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1           (9) LICENSURE AND CERTIFICATION OF DRUG-TESTING  
2 LABORATORIES.--A laboratory may analyze initial or  
3 confirmation drug specimens only if:  
4           (a) The laboratory is licensed by the Agency for  
5 Health Care Administration or certified by the United States  
6 Department of Health and Human Services. Licensed laboratories  
7 may perform all drug testing authorized under that licensure  
8 using all specimens authorized under such licensure. Each  
9 applicant for licensure must comply with the following  
10 requirements:  
11           1. Upon receipt of a completed, signed, and dated  
12 application, the agency shall require background screening, in  
13 accordance with the level 2 standards for screening set forth  
14 in chapter 435, of the managing employee, or other similarly  
15 titled individual responsible for the daily operation of the  
16 laboratory, and of the financial officer, or other similarly  
17 titled individual who is responsible for the financial  
18 operation of the laboratory, including billings for services.  
19 The applicant must comply with the procedures for level 2  
20 background screening as set forth in chapter 435, as well as  
21 the requirements of s. 435.03(3).  
22           2. The agency may require background screening of any  
23 other individual who is an applicant if the agency has  
24 probable cause to believe that he or she has been convicted of  
25 an offense prohibited under the level 2 standards for  
26 screening set forth in chapter 435.  
27           3. Proof of compliance with the level 2 background  
28 screening requirements of chapter 435 which has been submitted  
29 within the previous 5 years in compliance with any other  
30 health care licensure requirements of this state is acceptable  
31 in fulfillment of screening requirements.



1           4. A provisional license may be granted to an  
2 applicant when each individual required by this section to  
3 undergo background screening has met the standards for the  
4 abuse registry background check and the Department of Law  
5 Enforcement background check, but the agency has not yet  
6 received background screening results from the Federal Bureau  
7 of Investigation, or a request for a disqualification  
8 exemption has been submitted to the agency as set forth in  
9 chapter 435, but a response has not yet been issued. A license  
10 may be granted to the applicant upon the agency's receipt of a  
11 report of the results of the Federal Bureau of Investigation  
12 background screening for each individual required by this  
13 section to undergo background screening which confirms that  
14 all standards have been met, or upon the granting of a  
15 disqualification exemption by the agency as set forth in  
16 chapter 435. Any other person who is required to undergo level  
17 2 background screening may serve in his or her capacity  
18 pending the agency's receipt of the report from the Federal  
19 Bureau of Investigation. However, the person may not continue  
20 to serve if the report indicates any violation of background  
21 screening standards and a disqualification exemption has not  
22 been requested of and granted by the agency as set forth in  
23 chapter 435.

24           5. Each applicant must submit to the agency, with its  
25 application, a description and explanation of any exclusions,  
26 permanent suspensions, or terminations of the applicant from  
27 the Medicare program or Medicaid program. Proof of compliance  
28 with the requirements for disclosure of ownership and control  
29 interests under the Medicaid program or Medicare program shall  
30 be accepted in lieu of this submission.

31

1           6. Each applicant must submit to the agency a  
2 description and explanation of any conviction of an offense  
3 prohibited under the level 2 standards of chapter 435 by a  
4 member of the board of directors of the applicant, its  
5 officers, or any individual owning 5 percent or more of the  
6 applicant. This requirement does not apply to a director of a  
7 not-for-profit corporation or organization if the director  
8 serves solely in a voluntary capacity for the corporation or  
9 organization, does not regularly take part in the day-to-day  
10 operational decisions of the corporation or organization,  
11 receives no remuneration for his or her services on the  
12 corporation or organization's board of directors, and has no  
13 financial interest and has no family members with a financial  
14 interest in the corporation or organization, provided that the  
15 director and the not-for-profit corporation or organization  
16 include in the application a statement affirming that the  
17 director's relationship to the corporation satisfies the  
18 requirements of this subparagraph.

19           7. A license may not be granted to any applicant if  
20 the applicant or managing employee has been found guilty of,  
21 regardless of adjudication, or has entered a plea of nolo  
22 contendere or guilty to, any offense prohibited under the  
23 level 2 standards for screening set forth in chapter 435,  
24 unless an exemption from disqualification has been granted by  
25 the agency as set forth in chapter 435.

26           8. The agency may deny or revoke licensure if the  
27 applicant:

28           a. Has falsely represented a material fact in the  
29 application required by subparagraph 5. or subparagraph 6., or  
30 has omitted any material fact from the application required by  
31 subparagraph 5. or subparagraph 6.; or

1           b. Has had prior action taken against the applicant  
2 under the Medicare program or Medicaid program as set forth in  
3 subparagraph 5.

4           9. An application for license renewal must contain the  
5 information required under subparagraphs 5. and 6.

6           (b) The laboratory is certified pursuant to the  
7 Federal Substance Abuse and Mental Health Services  
8 Administration (SAMHSA). For the purposes of this section, a  
9 certified laboratory shall report drug-testing results for  
10 only those drugs and specimens authorized under such  
11 certification.

12           ~~(10)(9)~~ DRUG-TESTING STANDARDS FOR LABORATORIES.--

13           (a) A laboratory may analyze initial or confirmation  
14 test specimens only if:

15           1. The laboratory is licensed and approved by the  
16 Agency for Health Care Administration ~~using criteria~~  
17 ~~established by the United States Department of Health and~~  
18 ~~Human Services as general guidelines for modeling the state~~  
19 ~~drug-testing program pursuant to this section or the~~  
20 laboratory is certified by the United States Department of  
21 Health and Human Services.

22           2. The laboratory has written procedures to ensure the  
23 chain of custody.

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

26           a. The use of internal quality controls, including the  
27 use of samples of known concentrations which are used to check  
28 the performance and calibration of testing equipment, and  
29 periodic use of blind samples for overall accuracy.

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

4           c. Security measures implemented by the testing  
5 laboratory to preclude adulteration of specimens and drug test  
6 results.

7           d. Other necessary and proper actions taken to ensure  
8 reliable and accurate drug test results.

9           (b) A laboratory shall disclose to the medical review  
10 officer a ~~written~~ positive confirmed test result report within  
11 7 working days after receipt of the sample. All laboratory  
12 reports of a drug test result must, at a minimum, state:

13           1. The name and address of the laboratory that  
14 performed the test and the positive identification of the  
15 person tested.

16           2. Positive results on confirmation tests only, or  
17 negative results, as applicable.

18           3. A list of the drugs for which the drug analyses  
19 were conducted.

20           4. The type of tests conducted for both initial tests  
21 and confirmation tests and the minimum cutoff levels of the  
22 tests.

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

26  
27 A report must not disclose the presence or absence of any drug  
28 other than a specific drug and its metabolites listed pursuant  
29 to this section.

30           (c) The laboratory shall submit to the Agency for  
31 Health Care Administration a monthly report with statistical

1 information regarding the testing of employees and job  
2 applicants. The report must include information on the methods  
3 of analysis conducted, the drugs tested for, the number of  
4 positive and negative results for both initial tests and  
5 confirmation tests, and any other information deemed  
6 appropriate by the Agency for Health Care Administration. A  
7 monthly report must not identify specific employees or job  
8 applicants.

9 ~~(11)(10)~~ RULES.--

10 (a) The Agency for Health Care Administration shall  
11 adopt rules for laboratories and medical review officers  
12 engaged in drug-free workplace testing pursuant to this part.  
13 Such rules shall be modeled after the requirements and  
14 guidelines of s. 112.0455 and criteria established by the  
15 United States Department of Health and Human Services and the  
16 United States Department of Transportation. Such rules shall  
17 include as general guidelines for modeling the state  
18 drug-testing program concerning, but not be limited to:

19 1.(a) Standards for licensing and certifying  
20 drug-testing laboratories and suspension and revocation of  
21 such licenses.

22 2. Standards for collecting drug test specimens.

23 3. Standards for testing and reporting drug test  
24 results.

25 4. Grounds for disciplinary action against a licensed  
26 drug-free workplace laboratory, including, not limited to,  
27 licensure denial, suspension, revocation, and annulment.

28 5. Imposition of administrative fines not to exceed  
29 \$1,000 per violation for the violation of any provision of  
30 this act or rules adopted pursuant to this act. Each day of  
31

1 violation constitutes a separate violation and is subject to a  
2 separate fine.

3 6.(b) Urine, hair, blood, and other body specimens ~~and~~  
4 ~~minimum specimen amounts that may be used are appropriate~~ for  
5 drug-free workplace drug testing.

6 7. Minimum specimen amounts which are appropriate for  
7 drug testing, not inconsistent with or duplicative of existing  
8 federal drug-free workplace programs referenced in this  
9 section. Split specimens shall not be required by such rules,  
10 but are not prohibited.

11 8.(c) Methods of analysis and procedures to ensure  
12 reliable drug-testing results, including standards for initial  
13 tests and confirmation tests, not inconsistent with or  
14 duplicative of existing federal drug-free workplace programs  
15 referenced in this section.

16 9.(d) Minimum cutoff ~~detection~~ levels for each drug or  
17 metabolites of such drug found in body specimens and capable  
18 of revealing the presence of drugs or metabolites of drugs for  
19 the purposes of determining a positive test result, not  
20 inconsistent with or duplicative of existing federal drug-free  
21 workplace programs referenced in this section.

22 10.(e) Chain-of-custody procedures to ensure proper  
23 identification, labeling, and handling of specimens being  
24 tested, not inconsistent with or duplicative of existing  
25 federal drug-free workplace programs referenced in this  
26 section.

27 11.(f) Retention, storage, and transportation  
28 procedures to ensure reliable results on confirmation tests  
29 and retests, not inconsistent with or duplicative of existing  
30 federal drug-free workplace programs referenced in this  
31 section.

1           12. A list of the most common medications by brand  
2 name or common name, as applicable, which may alter or affect  
3 a drug test.

4           13. Standards for proficiency testing.

5           14. Standards for quality control.

6           15. Standards for quality assurance.

7           16. Requirements for the qualifications and  
8 registration of all medical review officers rendering reports  
9 on drug-free workplace results under this section.

10           17. Requirements for statistical reporting from  
11 licensed and certified laboratories and the medical review  
12 officer regarding the testing of employees and job applicants.  
13 The reports shall include information deemed appropriate by  
14 the Agency for Health Care Administration. No report shall  
15 identify specific employees, employers, state government  
16 agencies, or job applicants.

17           18. The inspection of licensed and certified drug  
18 testing laboratories, including the acceptance of the Federal  
19 Substance Abuse and Mental Health Services Administration  
20 (SAMHSA) inspection program for certified laboratories in lieu  
21 of inspection by the Agency for Health Care Administration in  
22 whole or in part.

23           (b) The Department of Labor and Employment Security  
24 shall also adopt any rules necessary to implement the  
25 provisions of this section.

26           ~~(12)(11)~~ PUBLIC EMPLOYEES IN SAFETY-SENSITIVE OR  
27 SPECIAL-RISK POSITIONS.--

28           (a) If an employee who is employed by a public  
29 employer in a safety-sensitive position enters an employee  
30 assistance program or drug rehabilitation program, the  
31 employer must assign the employee to a position other than a

1 safety-sensitive position or, if such position is not  
2 available, place the employee on leave while the employee is  
3 participating in the program. However, the employee shall be  
4 permitted to use any accumulated annual leave credits before  
5 leave may be ordered without pay.

6 (b) An employee who is employed by a public employer  
7 in a special-risk position may be discharged or disciplined by  
8 a public employer for the first positive confirmed test result  
9 if the drug confirmed is an illicit drug under s. 893.03. A  
10 special-risk employee who is participating in an employee  
11 assistance program or drug rehabilitation program may not be  
12 allowed to continue to work in any special-risk or  
13 safety-sensitive position of the public employer, but may be  
14 assigned to a position other than a safety-sensitive position  
15 or placed on leave while the employee is participating in the  
16 program. However, the employee shall be permitted to use any  
17 accumulated annual leave credits before leave may be ordered  
18 without pay.

19 (13)~~(12)~~ DENIAL OF BENEFITS.--An employer may ~~shall~~  
20 deny an employee medical or indemnity benefits under ~~this~~  
21 chapter 440, pursuant to this section.

22 (14)~~(13)~~ COLLECTIVE BARGAINING RIGHTS.--

23 (a) This section does not eliminate the bargainable  
24 rights as provided in the collective bargaining process if  
25 applicable.

26 (b) Drug-free workplace program requirements pursuant  
27 to this section shall be a mandatory topic of negotiations  
28 with any certified collective bargaining agent for nonfederal  
29 public sector employers that operate under a collective  
30 bargaining agreement.

31



1       ~~(15)~~~~(14)~~ APPLICABILITY.--A drug testing policy or  
2 procedure adopted by an employer pursuant to this chapter  
3 shall be applied equally to all employee classifications where  
4 the employee is subject to workers' compensation coverage.

5       (16) DISCIPLINARY REMEDIES.--

6       (a) An employee of a public employer that is a state  
7 agency who is disciplined or who is a job applicant for  
8 another position with such agency and is not hired pursuant to  
9 this section may file an appeal with the Public Employees  
10 Relations Commission. Employees of public employers as  
11 defined in this section that are not state agencies may file  
12 an appeal with the administrative entity customarily utilized  
13 by those employers for employee grievances and the rules of  
14 those entities shall apply to those proceedings.

15       (b) Any appeal filed with the commission must be filed  
16 within 30 calendar days after receipt by the employee or job  
17 applicant of notice of discipline or refusal to hire. The  
18 notice shall inform the employee or job applicant of the right  
19 to file an appeal, or, if available, the right to file a  
20 collective bargaining agreement pursuant to s. 447.401. Such  
21 appeals shall be resolved pursuant to the procedures  
22 established in ss. 447.207(1)-(4), 447.208(2), and 447.503(4)  
23 and (5). A hearing on the appeal shall be conducted within 30  
24 days after the filing of the appeal, unless an extension is  
25 requested by the employee or job applicant and granted by the  
26 commission or an arbitrator.

27       (c) The commission shall adopt rules concerning the  
28 receipt, processing, and resolution of appeals filed pursuant  
29 to this section.

30       (d) Appeals to the commission shall be the exclusive  
31 administrative remedy for any employee of a public employer

1 that is a state agency who is disciplined or any job applicant  
2 for a position within a state agency who is not hired pursuant  
3 to this section, notwithstanding the provisions of chapter  
4 120. However, nothing in this subsection shall affect the  
5 right of said employees or job applicants to file a collective  
6 bargaining grievance pursuant to s. 447.401. No employee or  
7 job applicant described in this subsection may file both an  
8 appeal and a grievance.

9 (e) An employee of a public employer or a job  
10 applicant for a position with a public employer who has been  
11 disciplined or has not been hired pursuant to this section  
12 must exhaust either the applicable administrative appeal  
13 process or collective bargaining grievance-arbitration process  
14 prior to filing any additional appeal allowed by law.

15 (f) A public employer who refuses to hire a job  
16 applicant based upon a positive, confirmed drug test result  
17 shall not be required to hold the position vacant while the  
18 job applicant pursues any applicable administrative remedy.  
19 However, if the job applicant prevails in that action, the  
20 employer shall provide that applicant the opportunity of  
21 employment in the next available comparable position.

22 (g) Upon resolving an appeal filed pursuant to  
23 paragraph (b), and finding a violation of this section, the  
24 commission may order the following relief:

25 1. Rescind the disciplinary action, expunge related  
26 records from the personnel file of the employee or job  
27 applicant, and reinstate the employee.

28 2. Order compliance with paragraph (f).

29 3. Award back pay and benefits.

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1           4. Award the prevailing employee or job applicant the  
2 necessary costs of the appeal, reasonable attorney's fees, and  
3 expert witness fees.

4           (17) NONDISCIPLINARY REMEDIES.--

5           (a) Any person alleging a violation of the provisions  
6 of this section that cannot be remedied by the commission or  
7 an arbitrator pursuant to subsection (16) must institute a  
8 civil action for injunctive relief or damages, or both, in a  
9 court of competent jurisdiction within 180 days after the  
10 alleged violation, or be barred from obtaining the following  
11 relief. Relief is specifically limited to:

12           1. An order restraining the continued violation of  
13 this section.

14           2. An award of the costs of litigation, expert witness  
15 fees, reasonable attorney's fees, and economic and noneconomic  
16 damages. Noneconomic damages shall be limited to the recovery  
17 of damages directly resulting from injury or loss caused by  
18 each violation of this section.

19           (b) Any employer who complies with the provisions of  
20 this section shall be immune from liability arising from all  
21 civil actions relating to any drug-testing program or  
22 procedure performed in compliance with this section.

23           (c) Unemployment compensation benefits may be denied  
24 to a job applicant who is denied employment due to a positive  
25 drug test if:

26           1. The employer's tests are conducted by a licensed  
27 and approved laboratory and conform to the standards set forth  
28 under chapter 440; or

29           2. The employer is in compliance with equivalent or  
30 more stringent drug-testing standards established by federal  
31 law or regulation.

1  
2 A positive drug test conducted in accordance with this  
3 paragraph creates a rebuttable presumption that the individual  
4 used a drug and that in so doing is considered to have engaged  
5 in disqualifying conduct. Such positive test results are  
6 self-authenticating and are admissible in unemployment  
7 compensation hearings.

8 (d) Pursuant to any claim alleging a violation of this  
9 section, including a claim under this section in which it is  
10 alleged that an employer's action with respect to a person was  
11 based on an incorrect test result, there shall be a rebuttable  
12 presumption that the test was valid if the employer complied  
13 with the provisions of this section.

14 (e) No cause of action shall arise in favor of any  
15 person based upon the failure of an employer to establish a  
16 program or policy for drug testing.

17 (18) REPORTING AND ACCOUNTABILITY STANDARDS.--The  
18 employer or carrier shall report to the division information  
19 related to the establishment of a drug-free workplace in  
20 accordance with rules adopted by the division to monitor the  
21 effectiveness of drug-free workplaces.

22 (19) EDUCATION REQUIREMENTS FOR CERTIFIED DRUG-FREE  
23 WORKPLACES.--The division shall adopt rules to specify  
24 educational requirements that must be provided by employers as  
25 an element of a drug-free workplace. Employers participating  
26 in a drug-free workplace shall provide such education  
27 according to those standards set by the division.

28 (20) MEDICAL REVIEW OFFICERS.--Any drug-testing  
29 program shall provide for a final review of drug test results.  
30 A positive or an inconclusive result or the presence of a  
31 possible contaminant or adulterant does not automatically

1 identify an employee or job applicant as a user of prohibited  
2 drugs or controlled substances. Negative test results shall be  
3 reviewed to ensure that proper collection and testing  
4 procedures were followed. An individual with a detailed  
5 knowledge of possible alternate medical explanations shall  
6 review all drug-testing results. Such review shall be  
7 performed by a medical review officer prior to the  
8 transmission of any drug test report to the employer. Such  
9 tests not reviewed by a qualified medical review officer in  
10 accordance with this section and the rules adopted under this  
11 section are invalid and shall not be used for the purposes of  
12 this section.

13 (21) FEDERAL COMPLIANCE.--The drug-testing procedures  
14 provided in this section do not apply when the specific work  
15 performed requires employees or job applicants to be subject  
16 to drug testing under federal regulations. If an employee  
17 tests positive for drugs or alcohol under federal regulations  
18 or refuses to submit to such testing, the employee shall be  
19 sanctioned as provided in this section.

20 (22) LICENSE FEE.--License fees from licensure of  
21 drug-testing laboratories shall be sufficient to carry out the  
22 responsibilities of the Agency for Health Care Administration  
23 for the regulation of drug-testing laboratories. The Agency  
24 for Health Care Administration shall collect fees for all  
25 licenses issued under this section. Each nonrefundable fee  
26 shall be due at the time of application and shall be payable  
27 to the Agency for Health Care Administration to be deposited  
28 in a trust fund administered by the Agency for Health Care  
29 Administration and used only for the purposes of this section.  
30 The fee schedule is as follows: for licensure as a  
31 drug-testing laboratory, an annual fee of not less than \$8,000

1 nor more than \$10,000 per fiscal year; for late filing of an  
2 application for renewal, an additional fee of \$500 per day  
3 shall be charged.

4 Section 5. Section 627.0915, Florida Statutes, is  
5 amended to read:

6 627.0915 Rate filings; workers' compensation,  
7 drug-free workplace, and safe employers.--The Department of  
8 Insurance shall approve rating plans for workers' compensation  
9 insurance that give a 10-percent discount ~~specific~~  
10 ~~identifiable consideration~~ in the setting of rates to  
11 employers that either implement a drug-free workplace program  
12 pursuant to rules adopted by the Division of Workers'  
13 Compensation of the Department of Labor and Employment  
14 Security or implement a safety program approved by the  
15 Division of Safety pursuant to rules adopted by the Division  
16 of Safety of the Department of Labor and Employment Security  
17 or implement both a drug-free workplace program and a safety  
18 program. The Division of Safety may by rule require that the  
19 client of a help supply services company comply with the  
20 essential requirements of a workplace safety program as a  
21 condition for receiving a premium credit. The plans must take  
22 effect January 1, 1994, must be actuarially sound, and must  
23 state the savings anticipated to result from such drug-testing  
24 and safety programs.

25 Section 6. Paragraph (a) of subsection (7) of section  
26 440.09, Florida Statutes, is amended to read:

27 440.09 Coverage.--

28 (7)(a) To ensure that the workplace is a drug-free  
29 environment and to deter the use of drugs and alcohol at the  
30 workplace, if the employer has reason to suspect that the  
31 injury was occasioned primarily by the intoxication of the

1 employee or by the use of any drug, as defined in this  
2 chapter, which affected the employee to the extent that the  
3 employee's normal faculties were impaired, and the employer  
4 has not implemented a drug-free workplace pursuant to ss.  
5 442.02 and 442.03 ~~440.101 and 440.102~~, the employer may  
6 require the employee to submit to a test for the presence of  
7 any or all drugs or alcohol in his or her system.

8 Section 7. Paragraphs (a) and (b) of subsection (11)  
9 of section 443.101, Florida Statutes, are amended to read:

10 443.101 Disqualification for benefits.--An individual  
11 shall be disqualified for benefits:

12 (11) If an individual is discharged from employment  
13 for drug use as evidenced by a positive, confirmed drug test  
14 as provided in paragraph (1)(d), or is rejected for offered  
15 employment because of a positive, confirmed drug test as  
16 provided in paragraph (2)(c), test results and chain of  
17 custody documentation provided to the employer by a licensed  
18 and approved drug-testing laboratory will be  
19 self-authenticating and admissible in unemployment  
20 compensation hearings, and such evidence will create a  
21 rebuttable presumption that the individual used, or was using,  
22 controlled substances, subject to the following conditions:

23 (a) To qualify for the presumption described in this  
24 subsection, an employer must have implemented a drug-free  
25 workplace program under ss. 442.02 and 442.03 ~~440.101 and~~  
26 ~~440.102~~, and must submit proof that the employer has qualified  
27 for the insurance discounts provided under s. 627.0915, as  
28 certified by the insurance carrier or self-insurance unit. In  
29 lieu thereof, an employer who does not fit the definition of  
30 "employer" in s. 442.03 ~~440.102~~ may qualify for the  
31 presumption provided that the employer is in compliance with

1 equivalent or more stringent drug-testing standards  
2 established by federal law or regulation.

3 (b) Only laboratories licensed and approved as  
4 provided in s. 442.03 ~~440.102(9)~~, or as provided by equivalent  
5 or more stringent licensing requirements established by  
6 federal law or regulation may perform such tests.

7 Section 8. Subsection (3) of section 443.1715, Florida  
8 Statutes, is amended to read:

9 443.1715 Disclosure of information; confidentiality.--

10 (3) SPECIAL PROVISIONS FOR DISCLOSURE OF DRUG TEST  
11 INFORMATION.--Notwithstanding the contrary provisions of s.  
12 442.03(8)~~440.102(8)~~, all information, interviews, reports,  
13 and drug test results, written or otherwise, received by an  
14 employer through a drug-testing program may be used or  
15 received in evidence, obtained in discovery, or disclosed in  
16 public or private proceedings conducted for the purpose of  
17 determining compensability under this chapter, including any  
18 administrative or judicial appeal taken hereunder. The  
19 employer, agent of the employer, or laboratory conducting a  
20 drug test may also obtain access to employee drug test  
21 information when consulting with legal counsel in connection  
22 with actions brought under or related to this chapter or when  
23 the information is relevant to its defense in a civil or  
24 administrative matter. Such information may also be released  
25 to a professional or occupational licensing board in a related  
26 disciplinary proceeding. However, unless otherwise provided by  
27 law, such information is confidential for all other purposes.

28 (a) Such information may not be disclosed or released,  
29 or used in any criminal proceeding against the person tested.  
30 Information released contrary to paragraph (c) is inadmissible  
31 as evidence in any such criminal proceeding.



1 (b) Unless otherwise provided by law, any such  
2 information received by a public employer through a  
3 drug-testing program, or obtained by a public employee under  
4 this chapter, is confidential and exempt from the provisions  
5 of s. 119.07(1) and s. 24(a), Art. I of the State  
6 Constitution, until introduced into the public record pursuant  
7 to a hearing conducted under s. 443.151(4).

8 (c) Confidentiality may be waived only by express and  
9 informed written consent executed by the person tested. The  
10 consent form must contain, at a minimum:

- 11 1. The name of the person who is authorized to obtain
- 12 the information;
- 13 2. The purpose of the disclosure;
- 14 3. The precise information to be disclosed;
- 15 4. The duration of the consent; and
- 16 5. The signature of the person authorizing release of
- 17 the information.

18 Section 9. Effective upon this act becoming a law,  
19 section 14 of chapter 99-240, Laws of Florida, is amended to  
20 read:

21 Section 14. Sections Chapter 442, Florida Statutes,  
22 ~~consisting of ss. 442.001, 442.002, 442.003, 442.004, 442.005,  
23 442.006, 442.007, 442.008, 442.009, 442.0105 ~~442.1015,~~  
24 442.011, 442.012, 442.013, 442.014, 442.015, 442.016, 442.017,  
25 442.018, 442.019, 442.020, 442.021, 442.022, 442.023, 442.101,  
26 442.102, 442.103, 442.104, 442.105, 442.106, 442.107, 442.108,  
27 442.109, 442.111, 442.112, 442.113, 442.115, 442.116, 442.118,  
28 442.1185, 442.119, 442.121, 442.123, 442.125, 442.126,  
29 442.127, 442.20, and 442.21, Florida Statutes, are ~~is~~ repealed  
30 July 1, 2000. The Department of Labor and Employment Security  
31 shall submit to the Governor and the Legislature by January 1,~~

1 2000, a report on a proposed reauthorization of the Division  
2 of Safety and the provisions of chapter 442, Florida Statutes,  
3 based upon the following criteria:

4 (1) External requirements mandating that the State of  
5 Florida provide a state agency for employment safety issues;

6 (2) Internal organizational requirements that  
7 necessitate a state agency for safety issues and a review of  
8 state agency practices for the provision of existing  
9 safety-related activities.

10 (3) A compilation of best practices among public and  
11 private employers which achieve safety results without the  
12 creation of a governmental regulatory apparatus.

13 (4) The appropriateness of a management-by-exception  
14 system in which the division functions as a contract  
15 performance auditor for the development of internal risk and  
16 safety management issues among employers.

17 Section 10. Except as otherwise provided herein, this  
18 act shall take effect October 1, 2000.

19

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21 HOUSE SUMMARY

22 Removes the duplication of drug-free workplace provisions  
23 in chs. 112 and 440, F.S., and transfers from ss.  
24 112.0455, 440.101, and 440.102, F.S., to ch. 442, F.S.,  
25 and revises and clarifies, drug-free workplace  
26 provisions. See bill for details.

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