

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

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

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57 drug rehabilitation program; removing provisions
58 related to collective bargaining rights for nonfederal
59 public sector employers; conforming cross-references;
60 amending s. 944.474, F.S.; revising provisions
61 governing employees of the state correctional system,
62 to conform to changes made by the act; providing an
63 effective date.

64
65 Be It Enacted by the Legislature of the State of Florida:

66
67 Section 1. Subsections (5), (7), and (8) and paragraphs
68 (h), (i), (j), and (k) of subsection (10) of section 112.0455,
69 Florida Statutes, are amended to read:

70 112.0455 Drug-Free Workplace Act.—

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

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

79 (b) "Drug test" or "test" means any chemical, biological,
80 or physical instrumental analysis administered for the purpose
81 of determining the presence or absence of a drug or its
82 metabolites.

83 (c) "Initial drug test" means a sensitive, rapid, and
84 reliable procedure to identify negative and presumptive positive

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85 specimens. All initial tests must ~~shall~~ use an immunoassay
86 procedure or an equivalent, or must ~~shall~~ use a more accurate
87 scientifically accepted method approved by the Agency for Health
88 Care Administration as ~~such~~ more accurate technology becomes
89 available in a cost-effective form.

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

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

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

107 (g) "Employee" means a ~~any~~ person who works for salary,
108 wages, or other remuneration for an employer.

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

112 (i) "Prescription or nonprescription medication" means a

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113 drug or medication obtained pursuant to a prescription as
114 defined by s. 893.02 or a medication that is authorized pursuant
115 to federal or state law for general distribution and use without
116 a prescription in the treatment of human diseases, ailments, or
117 injuries.

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

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

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

134 2. Abnormal conduct or erratic behavior while at work or a
135 significant deterioration in work performance.

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

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

140 5. Information that an employee has caused, or contributed

141 to, an accident while at work.

142 6. Evidence that an employee has used, possessed, sold,
 143 solicited, or transferred drugs while working or while on the
 144 employer's premises or while operating the employer's vehicle,
 145 machinery, or equipment.

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

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

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

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

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

162 (a) Job applicant testing.—An employer may require job
 163 applicants to submit to a drug test and may use a refusal to
 164 submit to a drug test or a positive confirmed drug test as a
 165 basis for refusal to hire the job applicant.

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

168 (c) Random testing.—An employer may conduct random testing

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169 once every 3 months.

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

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

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

185 (a) A sample shall be collected with due regard to the
186 privacy of the individual providing the sample, and in a manner
187 reasonably calculated to prevent substitution or contamination
188 of the sample.

189 (b) Specimen collection shall be documented, and the
190 documentation procedures shall include:

191 1. Labeling of specimen containers so as to reasonably
192 preclude the likelihood of erroneous identification of test
193 results.

194 2. A form for the employee or job applicant to provide any
195 information he or she considers relevant to the test, including
196 identification of currently or recently used prescription or

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197 nonprescription medication, or other relevant medical
198 information. Such form shall provide notice of the most common
199 medications by brand name or common name, as applicable, as well
200 as by chemical name, which may alter or affect a drug test. The
201 providing of information does ~~shall~~ not preclude the
202 administration of the drug test, but shall be taken into account
203 in interpreting any positive confirmed results.

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

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

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

213 1. A physician, a physician's assistant, a registered
214 professional nurse, a licensed practical nurse, a nurse
215 practitioner, or a certified paramedic who is present at the
216 scene of an accident for the purpose of rendering emergency
217 medical service or treatment.

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

219 (f) A person who collects or takes a specimen for a drug
220 test conducted pursuant to this section shall collect an amount
221 sufficient for two drug tests as determined by the Agency for
222 Health Care Administration.

223 (g) Any drug test conducted or requested by an employer
224 may occur before, during, or immediately after the regular work

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225 | period of the employee, and shall be deemed to be performed
226 | during work time for the purposes of determining compensation
227 | and benefits for the employee.

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

249 | (i) Within 5 working days after receipt of a positive
250 | confirmed test result from the testing laboratory, an employer
251 | shall inform an employee or job applicant in writing of such
252 | positive test result, the consequences of such results, and the

253 options available to the employee or job applicant.

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

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

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

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

275 ~~(n) In addition to the limitation under paragraph (m):~~
276 ~~1. Except as provided in subparagraph 3., no employer may~~
277 ~~discharge, discipline, or discriminate against an employee on~~
278 ~~the sole basis of the employee's first positive confirmed drug~~
279 ~~test, unless the employer has first given the employee an~~
280 ~~opportunity to participate in, at the employee's own expense or~~

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281 ~~pursuant to coverage under a health insurance plan, an employee~~
282 ~~assistance program or an alcohol and drug rehabilitation~~
283 ~~program, and:~~

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

291 ~~b. The employee has failed or refused to sign a written~~
292 ~~consent form allowing the employer to obtain information~~
293 ~~regarding the progress and successful completion of an employee~~
294 ~~assistance program or an alcohol and drug rehabilitation~~
295 ~~program.~~

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

304 ~~3. A special risk employee may be discharged or~~
305 ~~disciplined for the first positive confirmed drug test result~~
306 ~~when illicit drugs, pursuant to s. 893.13, are confirmed. No~~
307 ~~special risk employee shall be permitted to continue work in a~~
308 ~~safety-sensitive position, but may be placed either in a non-~~

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309 ~~safety sensitive position or on leave status while participating~~
310 ~~in an employee assistance program or an alcohol and drug~~
311 ~~rehabilitation program.~~

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

316 (o)~~(p)~~ An ~~No~~ employer may not discharge, discipline, or
317 discriminate against an employee, or refuse to hire a job
318 applicant, on the basis of any prior medical history revealed to
319 the employer pursuant to this section.

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

325 (q)~~(r)~~ An employer shall pay the cost of all drug tests,
326 initial and confirmation, which the employer requires of
327 employees.

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

330 (s)~~(t)~~ An ~~No~~ employer may not ~~shall~~ discharge, discipline,
331 or discriminate against an employee solely upon voluntarily
332 seeking treatment, while under the employ of the employer, for a
333 drug-related problem if the employee has not previously tested
334 positive for drug use, entered an employee assistance program
335 for drug-related problems, or entered an alcohol and drug
336 rehabilitation program. However, special risk employees may be

337 subject to discharge or disciplinary action when the presence of
 338 illicit drugs, pursuant to s. 893.13, is confirmed.

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

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

358 (10) EMPLOYER PROTECTION.—

359 (h) An employer may discharge or discipline ~~shall refer~~ an
 360 employee following ~~with~~ a first-time positive confirmed drug
 361 test result. If the employer does not discharge the employee,
 362 the employer may refer the employee to an employee assistance
 363 program or an alcohol and drug rehabilitation program in which
 364 the employee may participate at the expense of the employee or

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365 pursuant to a health insurance plan, ~~unless such employee is~~
366 ~~discharged as provided in subparagraph (8)(n)3. If the results~~
367 ~~of a subsequent confirmed drug test are positive, the employer~~
368 ~~may discharge or discipline the employee.~~

369 1. If an employer refers an employee to an employee
370 assistance program, the employer must determine whether the
371 employee is able to safely and effectively perform the job
372 duties assigned to the employee while the employee participates
373 in the employee assistance program.

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

386 3. If an employer refers an employee to an employee
387 assistance program and the employer determines that the employee
388 is unable, or the employee is deemed unable, to safely and
389 effectively perform the job duties assigned to the employee
390 before he or she completes the employee assistance program, the
391 employer shall place the employee in a job assignment that the
392 employer determines the employee can safely and effectively

393 perform while participating in the employee assistance program.

394 4. If a job assignment in which the employee may safely
 395 and effectively perform is unavailable, the employer shall place
 396 the employee on leave status while the employee is participating
 397 in an employee assistance program. If placed on leave status
 398 without pay, the employee may use accumulated leave credits
 399 before being placed on leave without pay.

400 (i) ~~Nothing in This section does not shall be construed to~~
 401 ~~prohibit an employer from conducting medical screening or other~~
 402 ~~tests required by any statute, rule, or regulation for the~~
 403 ~~purpose of monitoring exposure of employees to toxic or other~~
 404 ~~unhealthy substances in the workplace or in the performance of~~
 405 ~~job responsibilities. Such screening or tests shall be limited~~
 406 ~~to the specific substances expressly identified in the~~
 407 ~~applicable statute, rule, or regulation, unless prior written~~
 408 ~~consent of the employee is obtained for other tests.~~

409 ~~(j) An employer shall place a safety-sensitive position~~
 410 ~~employee whose drug test result is confirmed positive in a non-~~
 411 ~~safety-sensitive position, or if such a position is unavailable,~~
 412 ~~on leave status while the employee participates in an employee~~
 413 ~~assistance program or an alcohol and drug rehabilitation~~
 414 ~~program. If placed on leave status without pay, the employee~~
 415 ~~shall be permitted to use any accumulated leave credits prior to~~
 416 ~~being placed on leave without pay.~~

417 ~~(k) A special risk employee may be discharged or~~
 418 ~~disciplined on the first positive confirmed drug test result~~
 419 ~~when illicit drugs, pursuant to s. 893.13, are confirmed. No~~
 420 ~~special risk employee shall be permitted to continue work in a~~

421 ~~safety-sensitive position, but may be placed either in a non-~~
 422 ~~safety-sensitive position or on leave status while participating~~
 423 ~~in an employee assistance program or an alcohol and drug~~
 424 ~~rehabilitation program.~~

425 Section 2. Paragraphs (j) and (o) of subsection (1),
 426 subsection (2), paragraph (g) of subsection (7), and subsections
 427 (11), (13), (14), and (15) of section 440.102, Florida Statutes,
 428 are amended to read:

429 440.102 Drug-free workplace program requirements.—The
 430 following provisions apply to a drug-free workplace program
 431 implemented pursuant to law or to rules adopted by the Agency
 432 for Health Care Administration:

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

435 (j) "Job applicant" means a person who has applied for a
 436 position with an employer and has been offered employment
 437 conditioned upon successfully passing a drug test, and may have
 438 begun work pending the results of the drug test. For a public
 439 employer, "job applicant" means only a person who has applied
 440 for a special-risk or mandatory-testing ~~safety-sensitive~~
 441 position.

442 (o) "Mandatory-testing position" means, with respect to a
 443 public employer, a job assignment that requires the employee to
 444 carry a firearm, work closely with an employee who carries a
 445 firearm, perform life-threatening procedures, work with heavy or
 446 dangerous machinery, work as a safety inspector, work with
 447 children, work with detainees in the correctional system, work
 448 with confidential information or documents pertaining to

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449 criminal investigations, work with controlled substances, or a
450 job assignment that requires an employee security background
451 check, pursuant to s. 110.1127, or a job assignment in which a
452 momentary lapse in attention could result in injury or death to
453 another person. ~~"Safety-sensitive position" means, with respect~~
454 ~~to a public employer, a position in which a drug impairment~~
455 ~~constitutes an immediate and direct threat to public health or~~
456 ~~safety, such as a position that requires the employee to carry a~~
457 ~~firearm, perform life-threatening procedures, work with~~
458 ~~confidential information or documents pertaining to criminal~~
459 ~~investigations, or work with controlled substances; a position~~
460 ~~subject to s. 110.1127; or a position in which a momentary lapse~~
461 ~~in attention could result in injury or death to another person.~~

462 (2) DRUG TESTING.—An employer may test an employee or job
463 applicant for any drug described in paragraph (1)(c). In order
464 to qualify as having established a drug-free workplace program
465 under this section and to qualify for the discounts provided
466 under s. 627.0915 and deny medical and indemnity benefits under
467 this chapter, an employer must, at a minimum, implement drug
468 testing that conforms to the standards and procedures
469 established in this section and all applicable rules adopted
470 pursuant to this section as required in subsection (4). However,
471 an employer does not have a legal duty under this section to
472 request an employee or job applicant to undergo drug testing. If
473 an employer fails to maintain a drug-free workplace program in
474 accordance with the standards and procedures established in this
475 section and in applicable rules, the employer is ineligible for
476 discounts under s. 627.0915. However, an employer qualifies for

477 discounts under s. 627.0915 if the employer maintains a drug-
 478 free workplace program that is broader in scope than that
 479 provided for by the standards and procedures established in this
 480 section. An employer who qualifies ~~All employers qualifying~~ for
 481 and receives ~~receiving~~ discounts provided under s. 627.0915 must
 482 be reported annually by the insurer to the department.

483 (7) EMPLOYER PROTECTION.—

484 (g) This section does not prohibit an employer from
 485 conducting medical screening or other tests required, permitted,
 486 or not disallowed by any statute, rule, or regulation for the
 487 purpose of monitoring exposure of employees to toxic or other
 488 unhealthy substances in the workplace or in the performance of
 489 job responsibilities. Such screening or testing is limited to
 490 the specific substances expressly identified in the applicable
 491 statute, rule, or regulation, unless prior written consent of
 492 the employee is obtained for other tests. Such screening or
 493 testing need not be in compliance with the rules adopted by the
 494 Agency for Health Care Administration under this chapter or
 495 under s. 112.0455. A public employer may, through the use of an
 496 unbiased selection procedure, conduct random drug tests of
 497 employees occupying mandatory-testing ~~safety-sensitive~~ or
 498 special-risk positions if the testing is performed in accordance
 499 with drug-testing rules adopted by the Agency for Health Care
 500 Administration and the department. ~~If applicable, random drug~~
 501 ~~testing must be specified in a collective bargaining agreement~~
 502 ~~as negotiated by the appropriate certified bargaining agent~~
 503 ~~before such testing is implemented.~~

504 (11) PUBLIC EMPLOYEES IN MANDATORY-TESTING ~~SAFETY-~~

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505 ~~SENSITIVE~~ OR SPECIAL-RISK POSITIONS.—

506 (a) If an employee who is employed by a public employer in
507 a mandatory-testing ~~safety-sensitive~~ position enters an employee
508 assistance program or drug rehabilitation program, the employer
509 must assign the employee to a position other than a mandatory-
510 testing ~~safety-sensitive~~ position or, if such position is not
511 available, place the employee on leave while the employee is
512 participating in the program. However, the employee shall be
513 permitted to use any accumulated annual leave credits before
514 leave may be ordered without pay.

515 (b) An employee who is employed by a public employer in a
516 special-risk position may be discharged or disciplined by a
517 public employer for the first positive confirmed test result if
518 the drug confirmed is an illicit drug under s. 893.03. A
519 special-risk employee who is participating in an employee
520 assistance program or drug rehabilitation program may not be
521 allowed to continue to work in any special-risk or mandatory-
522 testing ~~safety-sensitive~~ position of the public employer, but
523 may be assigned to a position other than a mandatory-testing
524 ~~safety-sensitive~~ position or placed on leave while the employee
525 is participating in the program. However, the employee shall be
526 permitted to use any accumulated annual leave credits before
527 leave may be ordered without pay.

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

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

531 ~~(b) Drug-free workplace program requirements pursuant to~~
532 ~~this section shall be a mandatory topic of negotiations with any~~

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533 ~~certified collective bargaining agent for nonfederal public~~
534 ~~sector employers that operate under a collective bargaining~~
535 ~~agreement.~~

536 (13) ~~(14)~~ APPLICABILITY.—A drug testing policy or procedure
537 adopted by an employer pursuant to this chapter shall be applied
538 equally to all employee classifications where the employee is
539 subject to workers' compensation coverage.

540 (14) ~~(15)~~ STATE CONSTRUCTION CONTRACTS.—Each construction
541 contractor regulated under part I of chapter 489, and each
542 electrical contractor and alarm system contractor regulated
543 under part II of chapter 489, who contracts to perform
544 construction work under a state contract for educational
545 facilities governed by chapter 1013, for public property or
546 publicly owned buildings governed by chapter 255, or for state
547 correctional facilities governed by chapter 944 shall implement
548 a drug-free workplace program under this section.

549 Section 3. Section 944.474, Florida Statutes, is amended
550 to read:

551 944.474 Legislative intent; employee wellness program;
552 drug and alcohol testing.—

553 (1) It is the intent of the Legislature that the state
554 correctional system provide a safe and secure environment for
555 both inmates and staff. A healthy workforce is a productive
556 workforce, and security of the state correctional system can
557 best be provided by strong and healthy employees. The Department
558 of Corrections may develop and implement an employee wellness
559 program. The program may include, but is not limited to,
560 wellness education, smoking cessation, nutritional education,

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561 and overall health-risk reduction, including the effects of
562 using drugs and alcohol.

563 (2) An employee ~~Under no circumstances shall employees~~ of
564 the department may not test positive for illegal use of
565 controlled substances. An employee of the department may not be
566 under the influence of alcohol while on duty. In order to ensure
567 that these prohibitions are adhered to by all employees of the
568 department and notwithstanding s. 112.0455, the department may
569 develop a program for the drug testing of all job applicants and
570 for the random drug testing of all employees. The department may
571 randomly evaluate employees for the contemporaneous use or
572 influence of alcohol through the use of alcohol tests and
573 observation methods. Notwithstanding s. 112.0455, the department
574 may develop a program for the reasonable suspicion drug testing
575 of employees who are in ~~safety-sensitive or~~ special risk
576 positions, as defined in s. 112.0455(5), for the controlled
577 substances listed in s. 893.03(3)(d). The reasonable suspicion
578 drug testing authorized by this subsection shall be conducted in
579 accordance with s. 112.0455, but may also include testing upon
580 reasonable suspicion based on violent acts or violent behavior
581 of an employee who is on or off duty. The department shall adopt
582 rules pursuant to ss. 120.536(1) and 120.54 that are necessary
583 to administer this subsection.

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