

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

29 | alcohol and drug rehabilitation program; deeming that
30 | certain specified job activities cannot be performed
31 | safely and effectively while the employee is
32 | participating in the employee assistance program or
33 | alcohol and drug rehabilitation program; requiring the
34 | employer to transfer the employee to a job assignment
35 | that he or she can perform safely and effectively
36 | while the employee participates in the employee
37 | assistance program or alcohol and drug rehabilitation
38 | program; requiring the employer to place the employee
39 | on leave status while the employee is participating in
40 | an employee assistance program or an alcohol and drug
41 | rehabilitation program if such a position is
42 | unavailable; authorizing the employee to use
43 | accumulated leave credits before being placed on leave
44 | without pay; amending s. 440.102, F.S.; revising the
45 | definition of the term "job applicant" as it pertains
46 | to a public employer; removing the definition of the
47 | term "safety-sensitive position" and replacing it with
48 | the definition for the term "mandatory-testing
49 | position;" providing that an employer remains
50 | qualified for an insurer rate plan that discounts
51 | rates for workers' compensation and employer's
52 | liability insurance policies if the employer maintains
53 | a drug-free workplace program that is broader in scope
54 | than that provided for by the standards and procedures
55 | established in the act; authorizing a public employer,
56 | using an unbiased selection procedure, to conduct

CS/CS/HB 1205

2012

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

71
72 Be It Enacted by the Legislature of the State of Florida:

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

77 112.0455 Drug-Free Workplace Act.—

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

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

85 substances listed herein.

86 (b) "Drug test" or "test" means any chemical, biological,
87 or physical instrumental analysis administered for the purpose
88 of determining the presence or absence of a drug or its
89 metabolites.

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

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

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

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

113 passing a drug test.

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

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

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

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

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

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

141 2. Abnormal conduct or erratic behavior while at work or a
 142 significant deterioration in work performance.

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

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

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

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

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

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

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

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

166 (7) TYPES OF TESTING.—Drug testing must be conducted
 167 within each agency's appropriation. An employer may conduct is
 168 authorized, but is not required, to conduct, the following types

169 of drug tests:

170 (a) Job applicant testing.—An employer may require job
171 applicants to submit to a drug test and may use a refusal to
172 submit to a drug test or a positive confirmed drug test as a
173 basis for refusal to hire the job applicant.

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

176 (c) Random testing.—An employer may conduct random testing
177 once every 3 months. The random sample of employees chosen for
178 testing must be computer-generated by an independent third
179 party. A random sample may not constitute more than 10 percent
180 of the total employee population.

181 (d)-(e) Routine fitness for duty.—An employer may require
182 an employee to submit to a drug test if the test is conducted as
183 part of a routinely scheduled employee fitness-for-duty medical
184 examination that is part of the employer's established policy or
185 that is scheduled routinely for all members of an employment
186 classification or group.

187 (e)-(d) Followup testing.—If the employee in the course of
188 employment enters an employee assistance program for drug-
189 related problems, or an alcohol and drug rehabilitation program,
190 the employer may require the said employee to submit to a drug
191 test as a followup to such program, and on a quarterly,
192 semiannual, or annual basis for up to 2 years thereafter.

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

196 (a) A sample shall be collected with due regard to the

197 | privacy of the individual providing the sample, and in a manner
 198 | reasonably calculated to prevent substitution or contamination
 199 | of the sample.

200 | (b) Specimen collection shall be documented, and the
 201 | documentation procedures shall include:

202 | 1. Labeling of specimen containers so as to reasonably
 203 | preclude the likelihood of erroneous identification of test
 204 | results.

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

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

218 | (d) Each initial and confirmation test conducted under
 219 | this section, not including the taking or collecting of a
 220 | specimen to be tested, shall be conducted by a licensed
 221 | laboratory as described in subsection (12).

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

224 | 1. A physician, a physician's assistant, a registered

225 professional nurse, a licensed practical nurse, a nurse
226 practitioner, or a certified paramedic who is present at the
227 scene of an accident for the purpose of rendering emergency
228 medical service or treatment.

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

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

234 (g) Any drug test conducted or requested by an employer
235 may occur before, during, or immediately after the regular work
236 period of the employee, and shall be deemed to be performed
237 during work time for the purposes of determining compensation
238 and benefits for the employee.

239 (h) Every specimen that produces a positive confirmed
240 result shall be preserved by the licensed laboratory that
241 conducts the confirmation test for a period of at least 210 days
242 from the time the results of the positive confirmation test are
243 mailed or otherwise delivered to the employer. However, if an
244 employee or job applicant undertakes an administrative or legal
245 challenge to the test result, the employee or job applicant
246 shall notify the laboratory and the sample shall be retained by
247 the laboratory until the case or administrative appeal is
248 settled. During the 180-day period after written notification of
249 a positive test result, the employee or job applicant who has
250 provided the specimen shall be permitted by the employer to have
251 a portion of the specimen retested, at the employee or job
252 applicant's expense, at another laboratory, licensed and

253 approved by the Agency for Health Care Administration, chosen by
254 the employee or job applicant. The second laboratory must test
255 at equal or greater sensitivity for the drug in question as the
256 first laboratory. The first laboratory that ~~which~~ performed the
257 test for the employer is ~~shall be~~ responsible for the transfer
258 of the portion of the specimen to be retested, and for the
259 integrity of the chain of custody during such transfer.

260 (i) Within 5 working days after receipt of a positive
261 confirmed test result from the testing laboratory, an employer
262 shall inform an employee or job applicant in writing of such
263 positive test result, the consequences of such results, and the
264 options available to the employee or job applicant.

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

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

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

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

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

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

295 ~~a. The employee has either refused to participate in the~~
296 ~~employee assistance program or the alcohol and drug~~
297 ~~rehabilitation program or has failed to successfully complete~~
298 ~~such program, as evidenced by withdrawal from the program before~~
299 ~~its completion or a report from the program indicating~~
300 ~~unsatisfactory compliance, or by a positive test result on a~~
301 ~~confirmation test after completion of the program; or~~

302 ~~b. The employee has failed or refused to sign a written~~
303 ~~consent form allowing the employer to obtain information~~
304 ~~regarding the progress and successful completion of an employee~~
305 ~~assistance program or an alcohol and drug rehabilitation~~
306 ~~program.~~

307 ~~2. An employee in a safety-sensitive position shall be~~
308 ~~placed by the employer in a non-safety-sensitive position, or if~~

CS/CS/HB 1205

2012

309 ~~such position is unavailable, on leave status while~~
310 ~~participating in an employee assistance program or an alcohol~~
311 ~~and drug rehabilitation program. If placed on leave status~~
312 ~~without pay, the employee shall be permitted to use any~~
313 ~~accumulated leave credits prior to being placed on leave without~~
314 ~~pay.~~

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

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

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

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

336 ~~(q)(r)~~ An employer shall pay the cost of all drug tests,

337 initial and confirmation, which the employer requires of
338 employees.

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

341 (s)~~(t)~~ An ~~No~~ employer may not ~~shall~~ discharge, discipline,
342 or discriminate against an employee solely upon voluntarily
343 seeking treatment, while under the employ of the employer, for a
344 drug-related problem if the employee has not previously tested
345 positive for drug use, entered an employee assistance program
346 for drug-related problems, or entered an alcohol and drug
347 rehabilitation program. However, special risk employees may be
348 subject to discharge or disciplinary action when the presence of
349 illicit drugs, pursuant to s. 893.13, is confirmed.

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

359 (u)~~(v)~~ If an employee is unable to participate in
360 outpatient rehabilitation, the employee may be placed on leave
361 status while participating in an employee assistance program or
362 an alcohol and drug rehabilitation program. If placed on leave-
363 without-pay status, the employee shall be permitted to use any
364 accumulated leave credits prior to being placed on leave without

365 pay. Upon successful completion of an employee assistance
366 program or an alcohol and drug rehabilitation program, the
367 employee shall be reinstated to the same or equivalent position
368 that was held prior to such rehabilitation.

369 (10) EMPLOYER PROTECTION.—

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

380 1. If an employer refers an employee to an employee
381 assistance program or an alcohol and drug rehabilitation
382 program, the employer must determine whether the employee is
383 able to safely and effectively perform the job duties assigned
384 to the employee while the employee participates in the employee
385 assistance program or the alcohol and drug rehabilitation
386 program.

387 2. An employee whose assigned duties require the employee
388 to carry a firearm, work closely with an employee who carries a
389 firearm, perform life-threatening procedures, work with heavy or
390 dangerous machinery, work as a safety inspector, work with
391 children, work with detainees in the correctional system, work
392 with confidential information or documents pertaining to

393 criminal investigations, work with controlled substances, hold a
394 position subject to s. 110.1127, or hold a position in which a
395 momentary lapse in attention could result in injury or death to
396 another person, is deemed unable to safely and effectively
397 perform the job duties assigned to the employee while the
398 employee participates in the employee assistance program or the
399 alcohol and drug rehabilitation program.

400 3. If an employer refers an employee to an employee
401 assistance program or an alcohol and drug rehabilitation program
402 and the employer determines that the employee is unable, or the
403 employee is deemed unable, to safely and effectively perform the
404 job duties assigned to the employee before he or she completes
405 the employee assistance program or the alcohol and drug
406 rehabilitation program, the employer shall place the employee in
407 a job assignment that the employer determines the employee can
408 safely and effectively perform while participating in the
409 employee assistance program or the alcohol and drug
410 rehabilitation program.

411 4. If a job assignment in which the employee may safely
412 and effectively perform is unavailable, the employer shall place
413 the employee on leave status while the employee is participating
414 in an employee assistance program or an alcohol and drug
415 rehabilitation program. If placed on leave status without pay,
416 the employee may use accumulated leave credits before being
417 placed on leave without pay.

418 (i) ~~Nothing in~~ This section does not ~~shall be construed to~~
419 prohibit an employer from conducting medical screening or other
420 tests required by any statute, rule, or regulation for the

CS/CS/HB 1205

2012

421 purpose of monitoring exposure of employees to toxic or other
422 unhealthy substances in the workplace or in the performance of
423 job responsibilities. Such screening or tests shall be limited
424 to the specific substances expressly identified in the
425 applicable statute, rule, or regulation, unless prior written
426 consent of the employee is obtained for other tests.

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

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

443 Section 2. Paragraphs (j) and (o) of subsection (1),
444 subsection (2), paragraph (g) of subsection (7), and subsections
445 (11), (13), (14), and (15) of section 440.102, Florida Statutes,
446 are amended to read:

447 440.102 Drug-free workplace program requirements.—The
448 following provisions apply to a drug-free workplace program

449 implemented pursuant to law or to rules adopted by the Agency
 450 for Health Care Administration:

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

453 (j) "Job applicant" means a person who has applied for a
 454 position with an employer and has been offered employment
 455 conditioned upon successfully passing a drug test, and may have
 456 begun work pending the results of the drug test. For a public
 457 employer, "job applicant" means only a person who has applied
 458 for a special-risk or mandatory-testing ~~safety-sensitive~~
 459 position.

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

477 ~~investigations, or work with controlled substances; a position~~
478 ~~subject to s. 110.1127; or a position in which a momentary lapse~~
479 ~~in attention could result in injury or death to another person.~~

480 (2) DRUG TESTING.—An employer may test an employee or job
481 applicant for any drug described in paragraph (1)(c). In order
482 to qualify as having established a drug-free workplace program
483 under this section and to qualify for the discounts provided
484 under s. 627.0915 and deny medical and indemnity benefits under
485 this chapter, an employer must, at a minimum, implement drug
486 testing that conforms to the standards and procedures
487 established in this section and all applicable rules adopted
488 pursuant to this section as required in subsection (4). However,
489 an employer does not have a legal duty under this section to
490 request an employee or job applicant to undergo drug testing. If
491 an employer fails to maintain a drug-free workplace program in
492 accordance with the standards and procedures established in this
493 section and in applicable rules, the employer is ineligible for
494 discounts under s. 627.0915. However, an employer qualifies for
495 discounts under s. 627.0915 if the employer maintains a drug-
496 free workplace program that is broader in scope than that
497 provided for by the standards and procedures established in this
498 section. An employer who qualifies ~~All employers qualifying~~ for
499 and receives ~~receiving~~ discounts provided under s. 627.0915 must
500 be reported annually by the insurer to the department.

501 (7) EMPLOYER PROTECTION.—

502 (g) This section does not prohibit an employer from
503 conducting medical screening or other tests required, permitted,
504 or not disallowed by any statute, rule, or regulation for the

505 | purpose of monitoring exposure of employees to toxic or other
 506 | unhealthy substances in the workplace or in the performance of
 507 | job responsibilities. Such screening or testing is limited to
 508 | the specific substances expressly identified in the applicable
 509 | statute, rule, or regulation, unless prior written consent of
 510 | the employee is obtained for other tests. Such screening or
 511 | testing need not be in compliance with the rules adopted by the
 512 | Agency for Health Care Administration under this chapter or
 513 | under s. 112.0455. A public employer may, through the use of an
 514 | unbiased selection procedure, conduct random drug tests of
 515 | employees occupying mandatory-testing ~~safety-sensitive~~ or
 516 | special-risk positions if the testing is performed in accordance
 517 | with drug-testing rules adopted by the Agency for Health Care
 518 | Administration and the department. ~~If applicable, random drug~~
 519 | ~~testing must be specified in a collective bargaining agreement~~
 520 | ~~as negotiated by the appropriate certified bargaining agent~~
 521 | ~~before such testing is implemented.~~

522 | (11) PUBLIC EMPLOYEES IN MANDATORY-TESTING ~~SAFETY-~~
 523 | ~~SENSITIVE~~ OR SPECIAL-RISK POSITIONS.-

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

CS/CS/HB 1205

2012

533 (b) An employee who is employed by a public employer in a
534 special-risk position may be discharged or disciplined by a
535 public employer for the first positive confirmed test result if
536 the drug confirmed is an illicit drug under s. 893.03. A
537 special-risk employee who is participating in an employee
538 assistance program or drug rehabilitation program may not be
539 allowed to continue to work in any special-risk or mandatory-
540 testing ~~safety-sensitive~~ position of the public employer, but
541 may be assigned to a position other than a mandatory-testing
542 ~~safety-sensitive~~ position or placed on leave while the employee
543 is participating in the program. However, the employee shall be
544 permitted to use any accumulated annual leave credits before
545 leave may be ordered without pay.

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

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

549 ~~(b) Drug-free workplace program requirements pursuant to~~
550 ~~this section shall be a mandatory topic of negotiations with any~~
551 ~~certified collective bargaining agent for nonfederal public~~
552 ~~sector employers that operate under a collective bargaining~~
553 ~~agreement.~~

554 (13) ~~(14)~~ APPLICABILITY.—A drug testing policy or procedure
555 adopted by an employer pursuant to this chapter shall be applied
556 equally to all employee classifications where the employee is
557 subject to workers' compensation coverage.

558 (14) ~~(15)~~ STATE CONSTRUCTION CONTRACTS.—Each construction
559 contractor regulated under part I of chapter 489, and each
560 electrical contractor and alarm system contractor regulated

CS/CS/HB 1205

2012

561 under part II of chapter 489, who contracts to perform
562 construction work under a state contract for educational
563 facilities governed by chapter 1013, for public property or
564 publicly owned buildings governed by chapter 255, or for state
565 correctional facilities governed by chapter 944 shall implement
566 a drug-free workplace program under this section.

567 Section 3. Section 944.474, Florida Statutes, is amended
568 to read:

569 944.474 Legislative intent; employee wellness program;
570 drug and alcohol testing.—

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

581 (2) An employee ~~Under no circumstances shall employees~~ of
582 the department may not test positive for illegal use of
583 controlled substances. An employee of the department may not be
584 under the influence of alcohol while on duty. In order to ensure
585 that these prohibitions are adhered to by all employees of the
586 department and notwithstanding s. 112.0455, the department may
587 develop a program for the drug testing of all job applicants and
588 for the random drug testing of all employees. The department may

CS/CS/HB 1205

2012

589 randomly evaluate employees for the contemporaneous use or
590 influence of alcohol through the use of alcohol tests and
591 observation methods. Notwithstanding s. 112.0455, the department
592 may develop a program for the reasonable suspicion drug testing
593 of employees who are in ~~safety-sensitive or~~ special risk
594 positions, as defined in s. 112.0455(5), for the controlled
595 substances listed in s. 893.03(3)(d). The reasonable suspicion
596 drug testing authorized by this subsection shall be conducted in
597 accordance with s. 112.0455, but may also include testing upon
598 reasonable suspicion based on violent acts or violent behavior
599 of an employee who is on or off duty. The department shall adopt
600 rules pursuant to ss. 120.536(1) and 120.54 that are necessary
601 to administer this subsection.

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