



749502

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/01/2012	.	
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The Committee on Budget Subcommittee on General Government
Appropriations (Hays) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

112.0455 Drug-Free Workplace Act.—

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

(a) "Drug" means alcohol, including distilled spirits,
wine, malt beverages, and intoxicating liquors; amphetamines;



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13 cannabinoids; cocaine; phencyclidine (PCP); hallucinogens;
14 methaqualone; opiates; barbiturates; benzodiazepines; synthetic
15 narcotics; designer drugs; or a metabolite of any of the
16 substances listed herein.

17 (b) "Drug test" or "test" means any chemical, biological,
18 or physical instrumental analysis administered for the purpose
19 of determining the presence or absence of a drug or its
20 metabolites.

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

28 (d) "Confirmation test," "confirmed test," or "confirmed
29 drug test" means a second analytical procedure used to identify
30 the presence of a specific drug or metabolite in a specimen. The
31 confirmation test must be different in scientific principle from
32 that of the initial test procedure. This confirmation method
33 must be capable of providing requisite specificity, sensitivity,
34 and quantitative accuracy.

35 (e) "Chain of custody" refers to the methodology of
36 tracking specified materials or substances for the purpose of
37 maintaining control and accountability from initial collection
38 to final disposition for all such materials or substances and
39 providing for accountability at each stage in handling, testing,
40 storing specimens, and reporting of test results.

41 (f) "Job applicant" means a person who has applied for a



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42 ~~special risk or safety sensitive~~ position with an employer and
43 has been offered employment conditioned upon successfully
44 passing a drug test.

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

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

50 (i) "Prescription or nonprescription medication" means a
51 drug or medication obtained pursuant to a prescription as
52 defined by s. 893.02 or a medication that is authorized pursuant
53 to federal or state law for general distribution and use without
54 a prescription in the treatment of human diseases, ailments, or
55 injuries.

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

59 (k) ~~(j)~~ "Reasonable suspicion drug testing" means drug
60 testing based on a belief that an employee is using or has used
61 drugs in violation of the employer's policy drawn from specific
62 objective and articulable facts and reasonable inferences drawn
63 from those facts in light of experience. Reasonable suspicion
64 drug testing may ~~shall~~ not be required except upon the
65 recommendation of a supervisor who is at least one level of
66 supervision higher than the immediate supervisor of the employee
67 in question. Among other things, such facts and inferences may
68 be based upon:

69 1. Observable phenomena while at work, such as direct
70 observation of drug use or of the physical symptoms or



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71 manifestations of being under the influence of a drug.

72 2. Abnormal conduct or erratic behavior while at work or a
73 significant deterioration in work performance.

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

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

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

80 6. Evidence that an employee has used, possessed, sold,
81 solicited, or transferred drugs while working or while on the
82 employer's premises or while operating the employer's vehicle,
83 machinery, or equipment.

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

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

90 ~~(m) "Safety-sensitive position" means any position,~~
91 ~~including a supervisory or management position, in which a drug~~
92 ~~impairment would constitute an immediate and direct threat to~~
93 ~~public health or safety.~~

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

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



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100 of drug tests:

101 (a) *Job applicant testing.*—An employer may require job
102 applicants to submit to a drug test and may use a refusal to
103 submit to a drug test or a positive confirmed drug test as a
104 basis for refusal to hire the job applicant.

105 (b) *Reasonable suspicion.*—An employer may require an
106 employee to submit to reasonable suspicion drug testing.

107 (c) *Random testing.*—An employer may conduct random testing
108 once every 3 months. The random sample of employees chosen for
109 testing must be computer-generated by an independent third
110 party. A random sample may not constitute more than 10 percent
111 of the total employee population.

112 (d) ~~(e)~~ *Routine fitness for duty.*—An employer may require an
113 employee to submit to a drug test if the test is conducted as
114 part of a routinely scheduled employee fitness-for-duty medical
115 examination that is part of the employer's established policy or
116 that is scheduled routinely for all members of an employment
117 classification or group.

118 (e) ~~(d)~~ *Followup testing.*—If the employee in the course of
119 employment enters an employee assistance program for drug-
120 related problems, or an alcohol and drug rehabilitation program,
121 the employer may require the ~~said~~ employee to submit to a drug
122 test as a followup to such program, and on a quarterly,
123 semiannual, or annual basis for up to 2 years thereafter.

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

127 (a) A sample shall be collected with due regard to the
128 privacy of the individual providing the sample, and in a manner



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129 reasonably calculated to prevent substitution or contamination
130 of the sample.

131 (b) Specimen collection shall be documented, and the
132 documentation procedures shall include:

133 1. Labeling of specimen containers so as to reasonably
134 preclude the likelihood of erroneous identification of test
135 results.

136 2. A form for the employee or job applicant to provide any
137 information he or she considers relevant to the test, including
138 identification of currently or recently used prescription or
139 nonprescription medication, or other relevant medical
140 information. Such form shall provide notice of the most common
141 medications by brand name or common name, as applicable, as well
142 as by chemical name, which may alter or affect a drug test. The
143 providing of information does ~~shall~~ not preclude the
144 administration of the drug test, but shall be taken into account
145 in interpreting any positive confirmed results.

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

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

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

155 1. A physician, a physician's assistant, a registered
156 professional nurse, a licensed practical nurse, a nurse
157 practitioner, or a certified paramedic who is present at the



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158 scene of an accident for the purpose of rendering emergency
159 medical service or treatment.

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

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

165 (g) Any drug test conducted or requested by an employer may
166 occur before, during, or immediately after the regular work
167 period of the employee, and shall be deemed to be performed
168 during work time for the purposes of determining compensation
169 and benefits for the employee.

170 (h) Every specimen that produces a positive confirmed
171 result shall be preserved by the licensed laboratory that
172 conducts the confirmation test for a period of at least 210 days
173 from the time the results of the positive confirmation test are
174 mailed or otherwise delivered to the employer. However, if an
175 employee or job applicant undertakes an administrative or legal
176 challenge to the test result, the employee or job applicant
177 shall notify the laboratory and the sample shall be retained by
178 the laboratory until the case or administrative appeal is
179 settled. During the 180-day period after written notification of
180 a positive test result, the employee or job applicant who has
181 provided the specimen shall be permitted by the employer to have
182 a portion of the specimen retested, at the employee or job
183 applicant's expense, at another laboratory, licensed and
184 approved by the Agency for Health Care Administration, chosen by
185 the employee or job applicant. The second laboratory must test
186 at equal or greater sensitivity for the drug in question as the



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187 first laboratory. The first laboratory that ~~which~~ performed the
188 test for the employer is ~~shall be~~ responsible for the transfer
189 of the portion of the specimen to be retested, and for the
190 integrity of the chain of custody during such transfer.

191 (i) Within 5 working days after receipt of a positive
192 confirmed test result from the testing laboratory, an employer
193 shall inform an employee or job applicant in writing of such
194 positive test result, the consequences of such results, and the
195 options available to the employee or job applicant.

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

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

203 (l) If an employee or job applicant's explanation or
204 challenge of the positive test results is unsatisfactory to the
205 employer, a written explanation as to why the employee or job
206 applicant's explanation is unsatisfactory, along with the report
207 of positive results, shall be provided by the employer to the
208 employee or job applicant. All such documentation shall be kept
209 confidential and exempt from the provisions of s. 119.07(1) by
210 the employer pursuant to subsection (11) and shall be retained
211 by the employer for at least 1 year.

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



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216 ~~(n) In addition to the limitation under paragraph (m):~~
217 ~~1. Except as provided in subparagraph 3., no employer may~~
218 ~~discharge, discipline, or discriminate against an employee on~~
219 ~~the sole basis of the employee's first positive confirmed drug~~
220 ~~test, unless the employer has first given the employee an~~
221 ~~opportunity to participate in, at the employee's own expense or~~
222 ~~pursuant to coverage under a health insurance plan, an employee~~
223 ~~assistance program or an alcohol and drug rehabilitation~~
224 ~~program, and:~~
225 ~~a. The employee has either refused to participate in the~~
226 ~~employee assistance program or the alcohol and drug~~
227 ~~rehabilitation program or has failed to successfully complete~~
228 ~~such program, as evidenced by withdrawal from the program before~~
229 ~~its completion or a report from the program indicating~~
230 ~~unsatisfactory compliance, or by a positive test result on a~~
231 ~~confirmation test after completion of the program; or~~
232 ~~b. The employee has failed or refused to sign a written~~
233 ~~consent form allowing the employer to obtain information~~
234 ~~regarding the progress and successful completion of an employee~~
235 ~~assistance program or an alcohol and drug rehabilitation~~
236 ~~program.~~
237 ~~2. An employee in a safety-sensitive position shall be~~
238 ~~placed by the employer in a non-safety-sensitive position, or if~~
239 ~~such position is unavailable, on leave status while~~
240 ~~participating in an employee assistance program or an alcohol~~
241 ~~and drug rehabilitation program. If placed on leave status~~
242 ~~without pay, the employee shall be permitted to use any~~
243 ~~accumulated leave credits prior to being placed on leave without~~
244 ~~pay.~~



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245 ~~3. A special risk employee may be discharged or disciplined~~
246 ~~for the first positive confirmed drug test result when illicit~~
247 ~~drugs, pursuant to s. 893.13, are confirmed. No special risk~~
248 ~~employee shall be permitted to continue work in a safety-~~
249 ~~sensitive position, but may be placed either in a non-safety-~~
250 ~~sensitive position or on leave status while participating in an~~
251 ~~employee assistance program or an alcohol and drug~~
252 ~~rehabilitation program.~~

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

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

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

266 (q)~~(r)~~ An employer shall pay the cost of all drug tests,
267 initial and confirmation, which the employer requires of
268 employees.

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

271 (s)~~(t)~~ An ~~No~~ employer may not ~~shall~~ discharge, discipline,
272 or discriminate against an employee solely upon voluntarily
273 seeking treatment, while under the employ of the employer, for a



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274 drug-related problem if the employee has not previously tested
275 positive for drug use, entered an employee assistance program
276 for drug-related problems, or entered an alcohol and drug
277 rehabilitation program. However, special risk employees may be
278 subject to discharge or disciplinary action when the presence of
279 illicit drugs, pursuant to s. 893.13, is confirmed.

280 (t)~~(u)~~ If ~~where~~ testing is conducted based on reasonable
281 suspicion, each employer shall promptly detail in writing the
282 circumstances which formed the basis of the determination that
283 reasonable suspicion existed to warrant the testing. A copy of
284 this documentation shall be given to the employee upon request
285 and the original documentation shall be kept confidential and
286 exempt from the provisions of s. 119.07(1) by the employer
287 pursuant to subsection (11) and retained by the employer for at
288 least 1 year.

289 (u)~~(v)~~ If an employee is unable to participate in
290 outpatient rehabilitation, the employee may be placed on leave
291 status while participating in an employee assistance program or
292 an alcohol and drug rehabilitation program. If placed on leave-
293 without-pay status, the employee shall be permitted to use any
294 accumulated leave credits prior to being placed on leave without
295 pay. Upon successful completion of an employee assistance
296 program or an alcohol and drug rehabilitation program, the
297 employee shall be reinstated to the same or equivalent position
298 that was held prior to such rehabilitation.

299 (10) EMPLOYER PROTECTION.—

300 (h) An employer may discharge or discipline ~~shall refer~~ an
301 employee following ~~with~~ a first-time positive confirmed drug
302 test result. If the employer does not discharge the employee,



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303 the employer may refer the employee to an employee assistance
304 program or an alcohol and drug rehabilitation program in which
305 the employee may participate at the expense of the employee or
306 pursuant to a health insurance plan, unless such employee is
307 discharged as provided in subparagraph (8)(n)3. If the results
308 of a subsequent confirmed drug test are positive, the employer
309 may discharge or discipline the employee.

310 1. If an employer refers an employee to an employee
311 assistance program or an alcohol and drug rehabilitation
312 program, the employer must determine whether the employee is
313 able to safely and effectively perform the job duties assigned
314 to the employee while the employee participates in the employee
315 assistance program or the alcohol and drug rehabilitation
316 program.

317 2. An employee whose assigned duties require the employee
318 to carry a firearm, work closely with an employee who carries a
319 firearm, perform life-threatening procedures, work with heavy or
320 dangerous machinery, work as a safety inspector, work with
321 children, work with detainees in the correctional system, work
322 with confidential information or documents pertaining to
323 criminal investigations, work with controlled substances, hold a
324 position subject to s. 110.1127, or hold a position in which a
325 momentary lapse in attention could result in injury or death to
326 another person, is deemed unable to safely and effectively
327 perform the job duties assigned to the employee while the
328 employee participates in the employee assistance program or the
329 alcohol and drug rehabilitation program.

330 3. If an employer refers an employee to an employee
331 assistance program or an alcohol and drug rehabilitation program



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332 and the employer determines that the employee is unable, or the
333 employee is deemed unable, to safely and effectively perform the
334 job duties assigned to the employee before he or she completes
335 the employee assistance program or the alcohol and drug
336 rehabilitation program, the employer shall place the employee in
337 a job assignment that the employer determines the employee can
338 safely and effectively perform while participating in the
339 employee assistance program or the alcohol and drug
340 rehabilitation program.

341 4. If a job assignment in which the employee may safely and
342 effectively perform is unavailable, the employer shall place the
343 employee on leave status while the employee is participating in
344 an employee assistance program or an alcohol and drug
345 rehabilitation program. If placed on leave status without pay,
346 the employee may use accumulated leave credits before being
347 placed on leave without pay.

348 (i) ~~Nothing in~~ This section does not ~~shall be construed to~~
349 prohibit an employer from conducting medical screening or other
350 tests required by any statute, rule, or regulation for the
351 purpose of monitoring exposure of employees to toxic or other
352 unhealthy substances in the workplace or in the performance of
353 job responsibilities. Such screening or tests shall be limited
354 to the specific substances expressly identified in the
355 applicable statute, rule, or regulation, unless prior written
356 consent of the employee is obtained for other tests.

357 ~~(j) An employer shall place a safety-sensitive position~~
358 ~~employee whose drug test result is confirmed positive in a non-~~
359 ~~safety-sensitive position, or if such a position is unavailable,~~
360 ~~on leave status while the employee participates in an employee~~



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361 ~~assistance program or an alcohol and drug rehabilitation~~
362 ~~program. If placed on leave status without pay, the employee~~
363 ~~shall be permitted to use any accumulated leave credits prior to~~
364 ~~being placed on leave without pay.~~

365 ~~(k) A special risk employee may be discharged or~~
366 ~~disciplined on the first positive confirmed drug test result~~
367 ~~when illicit drugs, pursuant to s. 893.13, are confirmed. No~~
368 ~~special risk employee shall be permitted to continue work in a~~
369 ~~safety-sensitive position, but may be placed either in a non-~~
370 ~~safety-sensitive position or on leave status while participating~~
371 ~~in an employee assistance program or an alcohol and drug~~
372 ~~rehabilitation program.~~

373 Section 2. Paragraphs (j) and (o) of subsection (1),
374 subsection (2), paragraph (g) of subsection (7), and subsection
375 (11) of section 440.102, Florida Statutes, are amended to read:

376 440.102 Drug-free workplace program requirements.—The
377 following provisions apply to a drug-free workplace program
378 implemented pursuant to law or to rules adopted by the Agency
379 for Health Care Administration:

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

382 (j) "Job applicant" means a person who has applied for a
383 position with an employer and has been offered employment
384 conditioned upon successfully passing a drug test, and may have
385 begun work pending the results of the drug test. For a public
386 employer, "job applicant" means only a person who has applied
387 for a special-risk or mandatory-testing ~~safety-sensitive~~
388 position.

389 (o) "Mandatory-testing position" means, with respect to a



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390 public employer, a job assignment that requires the employee to
391 carry a firearm, work closely with an employee who carries a
392 firearm, perform life-threatening procedures, work with heavy or
393 dangerous machinery, work as a safety inspector, work with
394 children, work with detainees in the correctional system, work
395 with confidential information or documents pertaining to
396 criminal investigations, work with controlled substances, or a
397 job assignment that requires an employee security background
398 check, pursuant to s. 110.1127, or a job assignment in which a
399 momentary lapse in attention could result in injury or death to
400 another person. "Safety-sensitive position" means, with respect
401 to a public employer, a position in which a drug impairment
402 constitutes an immediate and direct threat to public health or
403 safety, such as a position that requires the employee to carry a
404 firearm, perform life-threatening procedures, work with
405 confidential information or documents pertaining to criminal
406 investigations, or work with controlled substances; a position
407 subject to s. 110.1127; or a position in which a momentary lapse
408 in attention could result in injury or death to another person.

409 (2) DRUG TESTING.—An employer may test an employee or job
410 applicant for any drug described in paragraph (1)(c). In order
411 to qualify as having established a drug-free workplace program
412 under this section and to qualify for the discounts provided
413 under s. 627.0915 and deny medical and indemnity benefits under
414 this chapter, an employer must, at a minimum, implement drug
415 testing that conforms to the standards and procedures
416 established in this section and all applicable rules adopted
417 pursuant to this section as required in subsection (4). However,
418 an employer does not have a legal duty under this section to



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419 request an employee or job applicant to undergo drug testing. If
420 an employer fails to maintain a drug-free workplace program in
421 accordance with the standards and procedures established in this
422 section and in applicable rules, the employer is ineligible for
423 discounts under s. 627.0915. However, an employer qualifies for
424 discounts under s. 627.0915 if the employer maintains a drug-
425 free workplace program that is broader in scope than that
426 provided for by the standards and procedures established in this
427 section. An employer who qualifies ~~All employers qualifying~~ for
428 and receives ~~receiving~~ discounts provided under s. 627.0915 must
429 be reported annually by the insurer to the department.

430 (7) EMPLOYER PROTECTION.—

431 (g) This section does not prohibit an employer from
432 conducting medical screening or other tests required, permitted,
433 or not disallowed by any statute, rule, or regulation for the
434 purpose of monitoring exposure of employees to toxic or other
435 unhealthy substances in the workplace or in the performance of
436 job responsibilities. Such screening or testing is limited to
437 the specific substances expressly identified in the applicable
438 statute, rule, or regulation, unless prior written consent of
439 the employee is obtained for other tests. Such screening or
440 testing need not be in compliance with the rules adopted by the
441 Agency for Health Care Administration under this chapter or
442 under s. 112.0455. A public employer may, through the use of an
443 unbiased selection procedure, conduct random drug tests of
444 employees occupying mandatory-testing ~~safety-sensitive~~ or
445 special-risk positions if the testing is performed in accordance
446 with drug-testing rules adopted by the Agency for Health Care
447 Administration and the department. ~~If applicable, random drug~~



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448 ~~testing must be specified in a collective bargaining agreement~~
449 ~~as negotiated by the appropriate certified bargaining agent~~
450 ~~before such testing is implemented.~~

451 (11) PUBLIC EMPLOYEES IN MANDATORY-TESTING ~~SAFETY-SENSITIVE~~
452 OR SPECIAL-RISK POSITIONS.—

453 (a) If an employee who is employed by a public employer in
454 a mandatory-testing ~~safety-sensitive~~ position enters an employee
455 assistance program or drug rehabilitation program, the employer
456 must assign the employee to a position other than a mandatory-
457 testing ~~safety-sensitive~~ position or, if such position is not
458 available, place the employee on leave while the employee is
459 participating in the program. However, the employee shall be
460 permitted to use any accumulated annual leave credits before
461 leave may be ordered without pay.

462 (b) An employee who is employed by a public employer in a
463 special-risk position may be discharged or disciplined by a
464 public employer for the first positive confirmed test result if
465 the drug confirmed is an illicit drug under s. 893.03. A
466 special-risk employee who is participating in an employee
467 assistance program or drug rehabilitation program may not be
468 allowed to continue to work in any special-risk or mandatory-
469 testing ~~safety-sensitive~~ position of the public employer, but
470 may be assigned to a position other than a mandatory-testing
471 ~~safety-sensitive~~ position or placed on leave while the employee
472 is participating in the program. However, the employee shall be
473 permitted to use any accumulated annual leave credits before
474 leave may be ordered without pay.

475 Section 3. Section 944.474, Florida Statutes, is amended to
476 read:



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477 944.474 Legislative intent; employee wellness program; drug
478 and alcohol testing.—

479 (1) It is the intent of the Legislature that the state
480 correctional system provide a safe and secure environment for
481 both inmates and staff. A healthy workforce is a productive
482 workforce, and security of the state correctional system can
483 best be provided by strong and healthy employees. The Department
484 of Corrections may develop and implement an employee wellness
485 program. The program may include, but is not limited to,
486 wellness education, smoking cessation, nutritional education,
487 and overall health-risk reduction, including the effects of
488 using drugs and alcohol.

489 (2) An employee ~~Under no circumstances shall employees~~ of
490 the department may not test positive for illegal use of
491 controlled substances. An employee of the department may not be
492 under the influence of alcohol while on duty. In order to ensure
493 that these prohibitions are adhered to by all employees of the
494 department and notwithstanding s. 112.0455, the department may
495 develop a program for the drug testing of all job applicants and
496 for the random drug testing of all employees. The department may
497 randomly evaluate employees for the contemporaneous use or
498 influence of alcohol through the use of alcohol tests and
499 observation methods. Notwithstanding s. 112.0455, the department
500 may develop a program for the reasonable suspicion drug testing
501 of employees who are in mandatory-testing positions, as defined
502 in s. 440.102(1)(o), ~~safety-sensitive~~ or special risk positions,
503 as defined in s. 112.0455(5), for the controlled substances
504 listed in s. 893.03(3)(d). The reasonable suspicion drug testing
505 authorized by this subsection shall be conducted in accordance



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506 with s. 112.0455, but may also include testing upon reasonable
507 suspicion based on violent acts or violent behavior of an
508 employee who is on or off duty. The department shall adopt rules
509 pursuant to ss. 120.536(1) and 120.54 that are necessary to
510 administer this subsection.

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

512

513 ===== T I T L E A M E N D M E N T =====

514 And the title is amended as follows:

515 Delete everything before the enacting clause
516 and insert:

517 A bill to be entitled
518 An act relating to the Drug-Free Workplace Act;
519 amending s. 112.0455, F.S.; revising the definition of
520 the term "job applicant"; defining the term "random
521 testing"; removing the definition of the term "safety-
522 sensitive position"; requiring drug testing to be
523 conducted within each state agency's appropriation;
524 authorizing a state agency to conduct random drug
525 testing every 3 months; providing testing selection
526 requirements; removing provisions prohibiting a state
527 agency from discharging or disciplining an employee
528 under certain circumstances based on the employee's
529 first positive confirmed drug test; removing
530 provisions limiting the circumstances under which an
531 agency may discharge an employee in a special risk or
532 safety-sensitive position; providing that an agency
533 may discharge or discipline an employee following a
534 first-time positive confirmed drug test result;



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535 authorizing an agency to refer an employee to an
536 employee assistance program or an alcohol and drug
537 rehabilitation program if the employee is not
538 discharged; requiring participation in an employee
539 assistance program or an alcohol and drug
540 rehabilitation program at the employee's own expense;
541 requiring the employer to determine if the employee is
542 able to safely and effectively perform the job duties
543 assigned to the employee while the employee is
544 participating in the employee assistance program or
545 alcohol and drug rehabilitation program; deeming that
546 certain specified job activities cannot be performed
547 safely and effectively while the employee is
548 participating in the employee assistance program or
549 alcohol and drug rehabilitation program; requiring the
550 employer to transfer the employee to a job assignment
551 that he or she can perform safely and effectively
552 while the employee participates in the employee
553 assistance program or alcohol and drug rehabilitation
554 program; requiring the employer to place the employee
555 on leave status while the employee is participating in
556 an employee assistance program or an alcohol and drug
557 rehabilitation program if such a position is
558 unavailable; authorizing the employee to use
559 accumulated leave credits before being placed on leave
560 without pay; amending s. 440.102, F.S.; revising the
561 definition of the term "job applicant" as it pertains
562 to a public employer; removing the definition of the
563 term "safety-sensitive position" and replacing it with



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564 the definition for the term "mandatory-testing
565 position;" providing that an employer remains
566 qualified for an insurer rate plan that discounts
567 rates for workers' compensation and employer's
568 liability insurance policies if the employer maintains
569 a drug-free workplace program that is broader in scope
570 than that provided for by the standards and procedures
571 established in the act; authorizing a public employer,
572 using an unbiased selection procedure, to conduct
573 random drug tests of employees occupying mandatory-
574 testing or special-risk positions if the testing is
575 performed in accordance with drug-testing rules
576 adopted by the Agency for Health Care Administration;
577 requiring that a public sector employer assign a
578 public sector employee to a position other than a
579 mandatory-testing position if the employee enters an
580 employee assistance program or drug rehabilitation
581 program; amending s. 944.474, F.S.; revising
582 provisions governing employees of the state
583 correctional system, to conform to changes made by the
584 act; providing an effective date.