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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/01/2012	.	
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	.	

The Committee on Governmental Oversight and Accountability
(Benacquisto) recommended the following:

Senate Amendment (with title amendment)

Delete lines 357 - 582
and insert:

(10) EMPLOYER PROTECTION.—

(h) An employer may discharge or discipline ~~shall refer~~ an employee following ~~with~~ a first-time positive confirmed drug test result. If the employer does not discharge the employee, the employer may refer the employee to an employee assistance program or an alcohol and drug rehabilitation program in which the employee may participate at the expense of the employee or pursuant to a health insurance plan, ~~unless such employee is~~



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13 ~~discharged as provided in subparagraph (8) (n)3. If the results~~
14 ~~of a subsequent confirmed drug test are positive, the employer~~
15 ~~may discharge or discipline the employee.~~

16 1. If an employer refers an employee to an employee
17 assistance program or an alcohol and drug rehabilitation
18 program, the employer must determine whether the employee is
19 able to safely and effectively perform the job duties assigned
20 to the employee while the employee participates in such a
21 program.

22 2. An employee whose assigned duties require the employee
23 to carry a firearm, work closely with an employee who carries a
24 firearm, perform life-threatening procedures, work with heavy or
25 dangerous machinery, work as a safety inspector, work with
26 children, work with detainees in the correctional system, work
27 with confidential information or documents pertaining to
28 criminal investigations, work with controlled substances, hold a
29 position subject to s. 110.1127, or hold a position in which a
30 momentary lapse in attention could result in injury or death to
31 another person, is deemed unable to safely and effectively
32 perform the job duties assigned to the employee while the
33 employee participates in the employee assistance program or
34 alcohol and drug rehabilitation program.

35 3. If an employer refers an employee to an employee
36 assistance program or an alcohol and drug rehabilitation program
37 and the employer determines that the employee is unable, or the
38 employee is deemed unable, to safely and effectively perform the
39 job duties assigned to the employee before he or she completes
40 such a program, the employer shall place the employee in a job
41 assignment that the employer determines the employee can safely



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42 and effectively perform while participating in the program.

43 4. If a job assignment in which the employee may safely and
44 effectively perform is unavailable, the employer shall place the
45 employee on leave status while the employee is participating in
46 an employee assistance program or an alcohol and drug
47 rehabilitation program. If placed on leave status without pay,
48 the employee may use accumulated leave credits before being
49 placed on leave without pay.

50 (i) ~~Nothing in This section does not shall be construed to~~
51 ~~prohibit an employer from conducting medical screening or other~~
52 ~~tests required by any statute, rule, or regulation for the~~
53 ~~purpose of monitoring exposure of employees to toxic or other~~
54 ~~unhealthy substances in the workplace or in the performance of~~
55 ~~job responsibilities. Such screening or tests shall be limited~~
56 ~~to the specific substances expressly identified in the~~
57 ~~applicable statute, rule, or regulation, unless prior written~~
58 ~~consent of the employee is obtained for other tests.~~

59 ~~(j) An employer shall place a safety-sensitive position~~
60 ~~employee whose drug test result is confirmed positive in a non-~~
61 ~~safety-sensitive position, or if such a position is unavailable,~~
62 ~~on leave status while the employee participates in an employee~~
63 ~~assistance program or an alcohol and drug rehabilitation~~
64 ~~program. If placed on leave status without pay, the employee~~
65 ~~shall be permitted to use any accumulated leave credits prior to~~
66 ~~being placed on leave without pay.~~

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



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71 ~~safety-sensitive position, but may be placed either in a non-~~
72 ~~safety-sensitive position or on leave status while participating~~
73 ~~in an employee assistance program or an alcohol and drug~~
74 ~~rehabilitation program.~~

75 Section 2. Paragraphs (j) and (o) of subsection (1),
76 subsection (2), paragraph (g) of subsection (7), and subsections
77 (11), (13), (14), and (15) of section 440.102, Florida Statutes,
78 are amended to read:

79 440.102 Drug-free workplace program requirements.—The
80 following provisions apply to a drug-free workplace program
81 implemented pursuant to law or to rules adopted by the Agency
82 for Health Care Administration:

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

85 (j) "Job applicant" means a person who has applied for a
86 position with an employer and has been offered employment
87 conditioned upon successfully passing a drug test, and may have
88 begun work pending the results of the drug test. For a public
89 employer, "job applicant" means only a person who has applied
90 for a special-risk or mandatory-testing ~~safety-sensitive~~
91 position.

92 (o) "Mandatory-testing position" means, with respect to a
93 public employer, a job assignment that requires the employee to
94 carry a firearm, work closely with an employee who carries a
95 firearm, perform life-threatening procedures, work with heavy or
96 dangerous machinery, work as a safety inspector, work with
97 children, work with detainees in the correctional system, work
98 with confidential information or documents pertaining to
99 criminal investigations, or work with controlled substances; a



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100 job assignment that requires an employee security background
101 check pursuant to s. 110.1127; or a job assignment in which a
102 momentary lapse in attention could result in injury or death to
103 another person ~~"Safety sensitive position" means, with respect~~
104 ~~to a public employer, a position in which a drug impairment~~
105 ~~constitutes an immediate and direct threat to public health or~~
106 ~~safety, such as a position that requires the employee to carry a~~
107 ~~firearm, perform life-threatening procedures, work with~~
108 ~~confidential information or documents pertaining to criminal~~
109 ~~investigations, or work with controlled substances; a position~~
110 ~~subject to s. 110.1127; or a position in which a momentary lapse~~
111 ~~in attention could result in injury or death to another person.~~

112 (2) DRUG TESTING.—An employer may test an employee or job
113 applicant for any drug described in paragraph (1)(c). In order
114 to qualify as having established a drug-free workplace program
115 under this section and to qualify for the discounts provided
116 under s. 627.0915 and deny medical and indemnity benefits under
117 this chapter, an employer must, at a minimum, implement drug
118 testing that conforms to the standards and procedures
119 established in this section and all applicable rules adopted
120 pursuant to this section as required in subsection (4). However,
121 an employer does not have a legal duty under this section to
122 request an employee or job applicant to undergo drug testing. If
123 an employer fails to maintain a drug-free workplace program in
124 accordance with the standards and procedures established in this
125 section and in applicable rules, the employer is ineligible for
126 discounts under s. 627.0915. However, an employer qualifies for
127 discounts under s. 627.0915 if the employer maintains a drug-
128 free workplace program that is broader in scope than that



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129 provided for by the standards and procedures established in this
130 section. An employer who qualifies ~~All employers qualifying~~ for
131 and receives ~~receiving~~ discounts provided under s. 627.0915 must
132 be reported annually by the insurer to the department.

133 (7) EMPLOYER PROTECTION.—

134 (g) This section does not prohibit an employer from
135 conducting medical screening or other tests required, permitted,
136 or not disallowed by any statute, rule, or regulation for the
137 purpose of monitoring exposure of employees to toxic or other
138 unhealthy substances in the workplace or in the performance of
139 job responsibilities. Such screening or testing is limited to
140 the specific substances expressly identified in the applicable
141 statute, rule, or regulation, unless prior written consent of
142 the employee is obtained for other tests. Such screening or
143 testing need not be in compliance with the rules adopted by the
144 Agency for Health Care Administration under this chapter or
145 under s. 112.0455. A public employer may, through the use of an
146 unbiased selection procedure, conduct random drug tests of
147 employees occupying mandatory-testing ~~safety-sensitive~~ or
148 special-risk positions if the testing is performed in accordance
149 with drug-testing rules adopted by the Agency for Health Care
150 Administration and the department. ~~If applicable, random drug~~
151 ~~testing must be specified in a collective bargaining agreement~~
152 ~~as negotiated by the appropriate certified bargaining agent~~
153 ~~before such testing is implemented.~~

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

156 (a) If an employee who is employed by a public employer in
157 a mandatory-testing ~~safety-sensitive~~ position enters an employee



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158 assistance program or drug rehabilitation program, the employer
159 must assign the employee to a position other than a mandatory-
160 testing safety-sensitive position or, if such position is not
161 available, place the employee on leave while the employee is
162 participating in the program. However, the employee shall be
163 permitted to use any accumulated annual leave credits before
164 leave may be ordered without pay.

165 (b) An employee who is employed by a public employer in a
166 special-risk position may be discharged or disciplined by a
167 public employer for the first positive confirmed test result if
168 the drug confirmed is an illicit drug under s. 893.03. A
169 special-risk employee who is participating in an employee
170 assistance program or drug rehabilitation program may not be
171 allowed to continue to work in any special-risk or mandatory-
172 testing safety-sensitive position of the public employer, but
173 may be assigned to a position other than a mandatory-testing
174 safety-sensitive position or placed on leave while the employee
175 is participating in the program. However, the employee shall be
176 permitted to use any accumulated annual leave credits before
177 leave may be ordered without pay.

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

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

181 ~~(b) Drug-free workplace program requirements pursuant to~~
182 ~~this section shall be a mandatory topic of negotiations with any~~
183 ~~certified collective bargaining agent for nonfederal public~~
184 ~~sector employers that operate under a collective bargaining~~
185 ~~agreement.~~

186 (13) ~~(14)~~ APPLICABILITY.—A drug testing policy or procedure



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187 adopted by an employer pursuant to this chapter shall be applied
188 equally to all employee classifications where the employee is
189 subject to workers' compensation coverage.

190 (14)~~(15)~~ STATE CONSTRUCTION CONTRACTS.—Each construction
191 contractor regulated under part I of chapter 489, and each
192 electrical contractor and alarm system contractor regulated
193 under part II of chapter 489, who contracts to perform
194 construction work under a state contract for educational
195 facilities governed by chapter 1013, for public property or
196 publicly owned buildings governed by chapter 255, or for state
197 correctional facilities governed by chapter 944 shall implement
198 a drug-free workplace program under this section.

199 Section 3. Section 944.474, Florida Statutes, is amended to
200 read:

201 944.474 Legislative intent; employee wellness program; drug
202 and alcohol testing.—

203 (1) It is the intent of the Legislature that the state
204 correctional system provide a safe and secure environment for
205 both inmates and staff. A healthy workforce is a productive
206 workforce, and security of the state correctional system can
207 best be provided by strong and healthy employees. The Department
208 of Corrections may develop and implement an employee wellness
209 program. The program may include, but is not limited to,
210 wellness education, smoking cessation, nutritional education,
211 and overall health-risk reduction, including the effects of
212 using drugs and alcohol.

213 (2) An employee ~~Under no circumstances shall employees of~~
214 the department may not test positive for illegal use of
215 controlled substances. An employee of the department may not be



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216 under the influence of alcohol while on duty. In order to ensure
217 that these prohibitions are adhered to by all employees of the
218 department and notwithstanding s. 112.0455, the department may
219 develop a program for the drug testing of all job applicants and
220 for the random drug testing of all employees. The department may
221 randomly evaluate employees for the contemporaneous use or
222 influence of alcohol through the use of alcohol tests and
223 observation methods. Notwithstanding s. 112.0455, the department
224 may develop a program for the reasonable suspicion drug testing
225 of employees who are in mandatory-testing ~~safety-sensitive~~ or
226 special risk positions, as defined in s. 112.0455(5) or s.
227 440.102(1)(o), respectively, for the controlled substances
228 listed in s. 893.03(3)(d). The reasonable suspicion drug testing
229 authorized by this subsection shall be conducted in accordance
230 with s. 112.0455, but may also include testing upon reasonable
231 suspicion based on violent acts or violent behavior of an
232 employee who is on or off duty. The department shall adopt rules
233 pursuant to ss. 120.536(1) and 120.54 that are necessary to
234 administer this subsection.

235
236 ===== T I T L E A M E N D M E N T =====

237 And the title is amended as follows:

238
239 Delete lines 13 - 57

240 and insert:

241
242 safety-sensitive position; providing that an agency
243 may discharge or discipline an employee following a
244 first-time positive confirmed drug test result;



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245 authorizing an agency to refer an employee to an
246 employee assistance program or an alcohol and drug
247 rehabilitation program if the employee is not
248 discharged; requiring participation in an employee
249 assistance program or an alcohol and drug
250 rehabilitation program at the employee's own expense
251 or pursuant to a health insurance plan; requiring the
252 employer to determine if the employee is able to
253 safely and effectively perform the job duties assigned
254 to the employee before the employee enters the
255 employee assistance program or the alcohol and drug
256 rehabilitation program; deeming that certain specified
257 job activities cannot be performed safely and
258 effectively while the employee is participating in the
259 employee assistance program or the alcohol and drug
260 rehabilitation program; requiring the employer to
261 transfer the employee to a job assignment that he or
262 she can perform safely and effectively while the
263 employee participates in the employee assistance
264 program or the alcohol and drug rehabilitation
265 program; requiring the employer to place the employee
266 on leave status while the employee is participating in
267 an employee assistance program or an alcohol and drug
268 rehabilitation program if such a position is
269 unavailable; authorizing the employee to use
270 accumulated leave credits before being placed on leave
271 without pay; amending s. 440.102, F.S.; revising the
272 definition of the term "job applicant"; removing the
273 definition of the term "safety-sensitive position" and



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274 replacing it with the definition for the term
275 "mandatory-testing position"; providing that an
276 employer remains qualified for an insurer rate plan
277 that discounts rates for worker's compensation and
278 employer's liability insurance policies if the
279 employer maintains a drug-free workplace program that
280 is broader in scope than that provided for by the
281 standards and procedures established in the act;
282 authorizing a public employer, using an unbiased
283 selection procedure, to conduct random drug tests of
284 employees occupying mandatory-testing or special-risk
285 positions if the testing is performed in accordance
286 with drug-testing rules adopted by the Agency for
287 Health Care Administration; requiring that a public
288 sector employer assign a public sector employee to a
289 position other than a mandatory-testing position if
290 the employee enters an employee assistance program or
291 alcohol and drug rehabilitation program; removing
292 provisions