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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/25/2012	.	
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The Committee on Health Regulation (Jones) recommended the following:

Senate Amendment (with title amendment)

Delete lines 368-575
and insert:

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

2. An employee whose assigned duties require the employee to carry a firearm, work closely with an employee who carries a



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13 firearm, perform life-threatening procedures, work with heavy or
14 dangerous machinery, work as a safety inspector, work with
15 children, work with detainees in the correctional system, work
16 with confidential information or documents pertaining to
17 criminal investigations, work with controlled substances, hold a
18 position subject to s. 110.1127, or hold a position in which a
19 momentary lapse in attention could result in injury or death to
20 another person, is deemed unable to safely and effectively
21 perform the job duties assigned to the employee while the
22 employee participates in the employee assistance program or
23 alcohol and drug rehabilitation program.

24 3. If an employer refers an employee to an employee
25 assistance program or an alcohol and drug rehabilitation program
26 and the employer determines that the employee is unable, or the
27 employee is deemed unable, to safely and effectively perform the
28 job duties assigned to the employee before he or she completes
29 such a program, the employer shall place the employee in a job
30 assignment that the employer determines the employee can safely
31 and effectively perform while participating in the program.

32 4. If a job assignment in which the employee may safely and
33 effectively perform is unavailable, the employer shall place the
34 employee on leave status while the employee is participating in
35 an employee assistance program or an alcohol and drug
36 rehabilitation program. If placed on leave status without pay,
37 the employee may use accumulated leave credits before being
38 placed on leave without pay.

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



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42 purpose of monitoring exposure of employees to toxic or other
43 unhealthy substances in the workplace or in the performance of
44 job responsibilities. Such screening or tests shall be limited
45 to the specific substances expressly identified in the
46 applicable statute, rule, or regulation, unless prior written
47 consent of the employee is obtained for other tests.

48 ~~(j) An employer shall place a safety-sensitive position~~
49 ~~employee whose drug test result is confirmed positive in a non-~~
50 ~~safety-sensitive position, or if such a position is unavailable,~~
51 ~~on leave status while the employee participates in an employee~~
52 ~~assistance program or an alcohol and drug rehabilitation~~
53 ~~program. If placed on leave status without pay, the employee~~
54 ~~shall be permitted to use any accumulated leave credits prior to~~
55 ~~being placed on leave without pay.~~

56 ~~(k) A special risk employee may be discharged or disciplined on~~
57 ~~the first positive confirmed drug test result when illicit~~
58 ~~drugs, pursuant to s. 893.13, are confirmed. No special risk~~
59 ~~employee shall be permitted to continue work in a safety-~~
60 ~~sensitive position, but may be placed either in a non-safety-~~
61 ~~sensitive position or on leave status while participating in an~~
62 ~~employee assistance program or an alcohol and drug~~
63 ~~rehabilitation program.~~

64 Section 2. Paragraphs (j) and (o) of subsection (1),
65 subsection (2), paragraph (g) of subsection (7), and subsections
66 (11), (13), (14), and (15) of section 440.102, Florida Statutes,
67 are amended to read:

68 440.102 Drug-free workplace program requirements.—The
69 following provisions apply to a drug-free workplace program
70 implemented pursuant to law or to rules adopted by the Agency



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71 for Health Care Administration:

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

74 (j) "Job applicant" means a person who has applied for a
75 position with an employer and has been offered employment
76 conditioned upon successfully passing a drug test, and may have
77 begun work pending the results of the drug test. ~~For a public
78 employer, "job applicant" means only a person who has applied
79 for a special-risk or safety-sensitive position.~~

80 (o) "Mandatory-testing position" means, with respect to a
81 public employer, a job assignment that requires the employee to
82 carry a firearm, work closely with an employee who carries a
83 firearm, perform life-threatening procedures, work with heavy or
84 dangerous machinery, work as a safety inspector, work with
85 children, work with detainees in the correctional system, work
86 with confidential information or documents pertaining to
87 criminal investigations, or work with controlled substances; a
88 job assignment that requires an employee security background
89 check pursuant to s. 110.1127; or a job assignment in which a
90 momentary lapse in attention could result in injury or death to
91 another person. ~~"Safety-sensitive position" means, with respect
92 to a public employer, a position in which a drug impairment
93 constitutes an immediate and direct threat to public health or
94 safety, such as a position that requires the employee to carry a
95 firearm, perform life-threatening procedures, work with
96 confidential information or documents pertaining to criminal
97 investigations, or work with controlled substances; a position
98 subject to s. 110.1127; or a position in which a momentary lapse
99 in attention could result in injury or death to another person.~~



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100 (2) DRUG TESTING.—An employer may test an employee or job
101 applicant for any drug described in paragraph (1)(c). In order
102 to qualify as having established a drug-free workplace program
103 under this section and to qualify for the discounts provided
104 under s. 627.0915 and deny medical and indemnity benefits under
105 this chapter, an employer must, at a minimum, implement drug
106 testing that conforms to the standards and procedures
107 established in this section and all applicable rules adopted
108 pursuant to this section as required in subsection (4). However,
109 an employer does not have a legal duty under this section to
110 request an employee or job applicant to undergo drug testing. If
111 an employer fails to maintain a drug-free workplace program in
112 accordance with the standards and procedures established in this
113 section and in applicable rules, the employer is ineligible for
114 discounts under s. 627.0915. However, an employer qualifies for
115 discounts under s. 627.0915 if the employer maintains a drug-
116 free workplace program that is broader in scope than that
117 provided for by the standards and procedures established in this
118 section. An employer who qualifies ~~All employers qualifying~~ for
119 and receives ~~receiving~~ discounts provided under s. 627.0915 must
120 be reported annually by the insurer to the department.

121 (7) EMPLOYER PROTECTION.—

122 (g) This section does not prohibit an employer from
123 conducting medical screening or other tests required, permitted,
124 or not disallowed by any statute, rule, or regulation for the
125 purpose of monitoring exposure of employees to toxic or other
126 unhealthy substances in the workplace or in the performance of
127 job responsibilities. Such screening or testing is limited to
128 the specific substances expressly identified in the applicable



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129 statute, rule, or regulation, unless prior written consent of
130 the employee is obtained for other tests. Such screening or
131 testing need not be in compliance with the rules adopted by the
132 Agency for Health Care Administration under this chapter or
133 under s. 112.0455. A public employer may, through the use of an
134 unbiased selection procedure, conduct random drug tests of
135 employees occupying mandatory-testing ~~safety-sensitive~~ or
136 special-risk positions if the testing is performed in accordance
137 with drug-testing rules adopted by the Agency for Health Care
138 Administration and the department. ~~If applicable, random drug~~
139 ~~testing must be specified in a collective bargaining agreement~~
140 ~~as negotiated by the appropriate certified bargaining agent~~
141 ~~before such testing is implemented.~~

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

144 (a) If an employee who is employed by a public employer in
145 a mandatory-testing ~~safety-sensitive~~ position enters an employee
146 assistance program or drug rehabilitation program, the employer
147 must assign the employee to a position other than a mandatory-
148 testing ~~safety-sensitive~~ position or, if such position is not
149 available, place the employee on leave while the employee is
150 participating in the program. However, the employee shall be
151 permitted to use any accumulated annual leave credits before
152 leave may be ordered without pay.

153 (b) An employee who is employed by a public employer in a
154 special-risk position may be discharged or disciplined by a
155 public employer for the first positive confirmed test result if
156 the drug confirmed is an illicit drug under s. 893.03. A
157 special-risk employee who is participating in an employee



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158 assistance program or drug rehabilitation program may not be
159 allowed to continue to work in any special-risk or mandatory-
160 testing safety-sensitive position of the public employer, but
161 may be assigned to a position other than a mandatory-testing
162 safety-sensitive position or placed on leave while the employee
163 is participating in the program. However, the employee shall be
164 permitted to use any accumulated annual leave credits before
165 leave may be ordered without pay.

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

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

169 ~~(b) Drug-free workplace program requirements pursuant to~~
170 ~~this section shall be a mandatory topic of negotiations with any~~
171 ~~certified collective bargaining agent for nonfederal public~~
172 ~~sector employers that operate under a collective bargaining~~
173 ~~agreement.~~

174 (13) ~~(14)~~ APPLICABILITY.—A drug testing policy or procedure
175 adopted by an employer pursuant to this chapter shall be applied
176 equally to all employee classifications where the employee is
177 subject to workers' compensation coverage.

178 (14) ~~(15)~~ STATE CONSTRUCTION CONTRACTS.—Each construction
179 contractor regulated under part I of chapter 489, and each
180 electrical contractor and alarm system contractor regulated
181 under part II of chapter 489, who contracts to perform
182 construction work under a state contract for educational
183 facilities governed by chapter 1013, for public property or
184 publicly owned buildings governed by chapter 255, or for state
185 correctional facilities governed by chapter 944 shall implement
186 a drug-free workplace program under this section.



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187 Section 3. Section 944.474, Florida Statutes, is amended to
188 read:

189 944.474 Legislative intent; employee wellness program; drug
190 and alcohol testing.—

191 (1) It is the intent of the Legislature that the state
192 correctional system provide a safe and secure environment for
193 both inmates and staff. A healthy workforce is a productive
194 workforce, and security of the state correctional system can
195 best be provided by strong and healthy employees. The Department
196 of Corrections may develop and implement an employee wellness
197 program. The program may include, but is not limited to,
198 wellness education, smoking cessation, nutritional education,
199 and overall health-risk reduction, including the effects of
200 using drugs and alcohol.

201 (2) An employee ~~Under no circumstances shall employees of~~
202 the department may not test positive for illegal use of
203 controlled substances. An employee of the department may not be
204 under the influence of alcohol while on duty. In order to ensure
205 that these prohibitions are adhered to by all employees of the
206 department and notwithstanding s. 112.0455, the department may
207 develop a program for the drug testing of all job applicants and
208 for the random drug testing of all employees. The department may
209 randomly evaluate employees for the contemporaneous use or
210 influence of alcohol through the use of alcohol tests and
211 observation methods. Notwithstanding s. 112.0455, the department
212 may develop a program for the reasonable suspicion drug testing
213 of employees who are in mandatory-testing ~~safety-sensitive or~~
214 special risk positions, as defined in ss. 440.102(1)(o) and
215 112.0455(5), respectively, for the controlled



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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to drug-free workplaces; amending s.
112.0455, F.S.; removing the definition of the term
"safety-sensitive position" and defining the term
"random testing;" revising the definition of the term
"job applicant;" authorizing an agency within state
government to conduct random drug testing every 3
months; removing provisions prohibiting a state agency
from discharging or disciplining an employee under
certain circumstances based on the employee's first
positive confirmed drug test; removing provisions
limiting the circumstances under which an agency may
discharge an employee in a special risk or safety-
sensitive position; providing that an agency may
discharge or discipline an employee following a first-
time positive confirmed drug test result; authorizing
an agency to refer an employee to an employee
assistance program or an alcohol and drug
rehabilitation program if the employee is not
discharged; requiring participation in an employee
assistance program or an alcohol and drug
rehabilitation program at the employee's own expense
or pursuant to a health insurance plan; requiring the
employer to determine if the employee is able to



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245 safely and effectively perform the job duties assigned
246 to the employee before the employee enters the
247 employee assistance program or the alcohol and drug
248 rehabilitation program; deeming that certain specified
249 job activities cannot be performed safely and
250 effectively while the employee is participating in the
251 employee assistance program or the alcohol and drug
252 rehabilitation program; requiring the employer to
253 transfer the employee to a job assignment that he or
254 she can perform safely and effectively while the
255 employee participates in the employee assistance
256 program or the alcohol and drug rehabilitation
257 program; requiring the employer to place the employee
258 on leave status while the employee is participating in
259 an employee assistance program or an alcohol and drug
260 rehabilitation program if such a position is
261 unavailable; authorizing the employee to use
262 accumulated leave credits before being placed on leave
263 without pay; amending s. 440.102, F.S.; revising the
264 definition of the term "job applicant;" removing the
265 definition of the term "safety-sensitive position" and
266 replacing it with the definition for the term
267 "mandatory-testing position;" providing that an
268 employer remains qualified for an insurer rate plan
269 that discounts rates for worker's compensation and
270 employer's liability insurance policies if the
271 employer maintains a drug-free workplace program that
272 is broader in scope than that provided for by the
273 standards and procedures established in the act;



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274 authorizing a public employer, using an unbiased
275 selection procedure, to conduct random drug tests of
276 employees occupying mandatory-testing or special-risk
277 positions if the testing is performed in accordance
278 with drug-testing rules adopted by the Agency for
279 Health Care Administration; requiring that a public
280 sector employer assign a public sector employee to a
281 position other than a mandatory-testing position if
282 the employee enters an employee assistance program or
283 alcohol and drug rehabilitation program; removing
284 provisions related to collective bargaining rights for
285 nonfederal public sector employers; conforming cross-
286 references; amending s. 944.474, F.S.; revising
287 provisions governing employees of the state
288 correctional system, to conform to changes made by the
289 act; providing an effective date.