

By Senator Hays

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

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

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59 public sector employers; conforming cross-references;  
60 amending s. 944.474, F.S.; revising provisions  
61 governing employees of the state correctional system,  
62 to conform to changes made by the act; providing an  
63 effective date.

64

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

66

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

70 112.0455 Drug-Free Workplace Act.—

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

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

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

83 (c) "Initial drug test" means a sensitive, rapid, and  
84 reliable procedure to identify negative and presumptive positive  
85 specimens. All initial tests must ~~shall~~ use an immunoassay  
86 procedure or an equivalent, or must ~~shall~~ use a more accurate  
87 scientifically accepted method approved by the Agency for Health

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88 Care Administration as ~~such~~ more accurate technology becomes  
89 available in a cost-effective form.

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

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

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

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

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

112 (i) "Prescription or nonprescription medication" means a  
113 drug or medication obtained pursuant to a prescription as  
114 defined by s. 893.02 or a medication that is authorized pursuant  
115 to federal or state law for general distribution and use without  
116 a prescription in the treatment of human diseases, ailments, or

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117 injuries.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

168        (c) *Random testing.*—An employer may conduct random testing  
169 once every 3 months.

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

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175 classification or group.

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

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

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

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

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

194 2. A form for the employee or job applicant to provide any  
195 information he or she considers relevant to the test, including  
196 identification of currently or recently used prescription or  
197 nonprescription medication, or other relevant medical  
198 information. Such form shall provide notice of the most common  
199 medications by brand name or common name, as applicable, as well  
200 as by chemical name, which may alter or affect a drug test. The  
201 providing of information does ~~shall~~ not preclude the  
202 administration of the drug test, but shall be taken into account  
203 in interpreting any positive confirmed results.

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

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

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

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

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

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

223 (g) Any drug test conducted or requested by an employer may  
224 occur before, during, or immediately after the regular work  
225 period of the employee, and shall be deemed to be performed  
226 during work time for the purposes of determining compensation  
227 and benefits for the employee.

228 (h) Every specimen that produces a positive confirmed  
229 result shall be preserved by the licensed laboratory that  
230 conducts the confirmation test for a period of at least 210 days  
231 from the time the results of the positive confirmation test are  
232 mailed or otherwise delivered to the employer. However, if an



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233 employee or job applicant undertakes an administrative or legal  
234 challenge to the test result, the employee or job applicant  
235 shall notify the laboratory and the sample shall be retained by  
236 the laboratory until the case or administrative appeal is  
237 settled. During the 180-day period after written notification of  
238 a positive test result, the employee or job applicant who has  
239 provided the specimen shall be permitted by the employer to have  
240 a portion of the specimen retested, at the employee or job  
241 applicant's expense, at another laboratory, licensed and  
242 approved by the Agency for Health Care Administration, chosen by  
243 the employee or job applicant. The second laboratory must test  
244 at equal or greater sensitivity for the drug in question as the  
245 first laboratory. The first laboratory that ~~which~~ performed the  
246 test for the employer is ~~shall be~~ responsible for the transfer  
247 of the portion of the specimen to be retested, and for the  
248 integrity of the chain of custody during such transfer.

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

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

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

261 (l) If an employee or job applicant's explanation or

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

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

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

275 ~~1. Except as provided in subparagraph 3., no employer may~~  
276 ~~discharge, discipline, or discriminate against an employee on~~  
277 ~~the sole basis of the employee's first positive confirmed drug~~  
278 ~~test, unless the employer has first given the employee an~~  
279 ~~opportunity to participate in, at the employee's own expense or~~  
280 ~~pursuant to coverage under a health insurance plan, an employee~~  
281 ~~assistance program or an alcohol and drug rehabilitation~~  
282 ~~program, and:~~

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

290 ~~b. The employee has failed or refused to sign a written~~

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291 ~~consent form allowing the employer to obtain information~~  
292 ~~regarding the progress and successful completion of an employee~~  
293 ~~assistance program or an alcohol and drug rehabilitation~~  
294 ~~program.~~

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

303 ~~3. A special risk employee may be discharged or disciplined~~  
304 ~~for the first positive confirmed drug test result when illicit~~  
305 ~~drugs, pursuant to s. 893.13, are confirmed. No special risk~~  
306 ~~employee shall be permitted to continue work in a safety-~~  
307 ~~sensitive position, but may be placed either in a non-safety-~~  
308 ~~sensitive position or on leave status while participating in an~~  
309 ~~employee assistance program or an alcohol and drug~~  
310 ~~rehabilitation program.~~

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

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

319 ~~(p)(q)~~ (p) An employer who performs drug testing or specimen

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320 collection shall use chain-of-custody procedures as established  
321 by the Agency for Health Care Administration to ensure proper  
322 recordkeeping, handling, labeling, and identification of all  
323 specimens to be tested.

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

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

329 (s)~~(t)~~ An ~~No~~ employer may not ~~shall~~ discharge, discipline,  
330 or discriminate against an employee solely upon voluntarily  
331 seeking treatment, while under the employ of the employer, for a  
332 drug-related problem if the employee has not previously tested  
333 positive for drug use, entered an employee assistance program  
334 for drug-related problems, or entered an alcohol and drug  
335 rehabilitation program. However, special risk employees may be  
336 subject to discharge or disciplinary action when the presence of  
337 illicit drugs, pursuant to s. 893.13, is confirmed.

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

347 (u)~~(v)~~ If an employee is unable to participate in  
348 outpatient rehabilitation, the employee may be placed on leave

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

357 (10) EMPLOYER PROTECTION.—

358 (h) An employer may discharge or discipline ~~shall refer~~ an  
359 employee following ~~with~~ a first-time positive confirmed drug  
360 test result. If the employer does not discharge the employee,  
361 the employer may refer the employee to an employee assistance  
362 program or an alcohol and drug rehabilitation program in which  
363 the employee may participate at the expense of the employee or  
364 pursuant to a health insurance plan, ~~unless such employee is~~  
365 ~~discharged as provided in subparagraph (8)(n)3. If the results~~  
366 ~~of a subsequent confirmed drug test are positive, the employer~~  
367 ~~may discharge or discipline the employee.~~

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

373 2. An employee whose assigned duties require the employee  
374 to carry a firearm, work closely with an employee who carries a  
375 firearm, perform life-threatening procedures, work with heavy or  
376 dangerous machinery, work as a safety inspector, work with  
377 children, work with detainees in the correctional system, work

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378 with confidential information or documents pertaining to  
379 criminal investigations, work with controlled substances, hold a  
380 position subject to s. 110.1127, or hold a position in which a  
381 momentary lapse in attention could result in injury or death to  
382 another person, is deemed unable to safely and effectively  
383 perform the job duties assigned to the employee while the  
384 employee participates in the employee assistance program.

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

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

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

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407 consent of the employee is obtained for other tests.

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

416 ~~(k) A special risk employee may be discharged or~~  
417 ~~disciplined on the first positive confirmed drug test result~~  
418 ~~when illicit drugs, pursuant to s. 893.13, are confirmed. No~~  
419 ~~special risk employee shall be permitted to continue work in a~~  
420 ~~safety-sensitive position, but may be placed either in a non-~~  
421 ~~safety-sensitive position or on leave status while participating~~  
422 ~~in an employee assistance program or an alcohol and drug~~  
423 ~~rehabilitation program.~~

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

428 440.102 Drug-free workplace program requirements.—The  
429 following provisions apply to a drug-free workplace program  
430 implemented pursuant to law or to rules adopted by the Agency  
431 for Health Care Administration:

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

434 (j) "Job applicant" means a person who has applied for a  
435 position with an employer and has been offered employment

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

441 (o) "Mandatory-testing position" means, with respect to a  
442 public employer, a job assignment that requires the employee to  
443 carry a firearm, work closely with an employee who carries a  
444 firearm, perform life-threatening procedures, work with heavy or  
445 dangerous machinery, work as a safety inspector, work with  
446 children, work with detainees in the correctional system, work  
447 with confidential information or documents pertaining to  
448 criminal investigations, or work with controlled substances; a  
449 job assignment that requires an employee security background  
450 check pursuant to s. 110.1127; or a job assignment in which a  
451 momentary lapse in attention could result in injury or death to  
452 another person. "Safety-sensitive position" means, with respect  
453 to a public employer, a position in which a drug impairment  
454 constitutes an immediate and direct threat to public health or  
455 safety, such as a position that requires the employee to carry a  
456 firearm, perform life-threatening procedures, work with  
457 confidential information or documents pertaining to criminal  
458 investigations, or work with controlled substances; a position  
459 subject to s. 110.1127; or a position in which a momentary lapse  
460 in attention could result in injury or death to another person.

461 (2) DRUG TESTING.—An employer may test an employee or job  
462 applicant for any drug described in paragraph (1)(c). In order  
463 to qualify as having established a drug-free workplace program  
464 under this section and to qualify for the discounts provided



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465 under s. 627.0915 and deny medical and indemnity benefits under  
466 this chapter, an employer must, at a minimum, implement drug  
467 testing that conforms to the standards and procedures  
468 established in this section and all applicable rules adopted  
469 pursuant to this section as required in subsection (4). However,  
470 an employer does not have a legal duty under this section to  
471 request an employee or job applicant to undergo drug testing. If  
472 an employer fails to maintain a drug-free workplace program in  
473 accordance with the standards and procedures established in this  
474 section and in applicable rules, the employer is ineligible for  
475 discounts under s. 627.0915. However, an employer qualifies for  
476 discounts under s. 627.0915 if the employer maintains a drug-  
477 free workplace program that is broader in scope than that  
478 provided for by the standards and procedures established in this  
479 section. An employer who qualifies ~~All employers qualifying~~ for  
480 and receives ~~receiving~~ discounts provided under s. 627.0915 must  
481 be reported annually by the insurer to the department.

482 (7) EMPLOYER PROTECTION.—

483 (g) This section does not prohibit an employer from  
484 conducting medical screening or other tests required, permitted,  
485 or not disallowed by any statute, rule, or regulation for the  
486 purpose of monitoring exposure of employees to toxic or other  
487 unhealthy substances in the workplace or in the performance of  
488 job responsibilities. Such screening or testing is limited to  
489 the specific substances expressly identified in the applicable  
490 statute, rule, or regulation, unless prior written consent of  
491 the employee is obtained for other tests. Such screening or  
492 testing need not be in compliance with the rules adopted by the  
493 Agency for Health Care Administration under this chapter or

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494 under s. 112.0455. A public employer may, through the use of an  
495 unbiased selection procedure, conduct random drug tests of  
496 employees occupying mandatory-testing ~~safety-sensitive~~ or  
497 special-risk positions if the testing is performed in accordance  
498 with drug-testing rules adopted by the Agency for Health Care  
499 Administration and the department. ~~If applicable, random drug~~  
500 ~~testing must be specified in a collective bargaining agreement~~  
501 ~~as negotiated by the appropriate certified bargaining agent~~  
502 ~~before such testing is implemented.~~

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

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

514 (b) An employee who is employed by a public employer in a  
515 special-risk position may be discharged or disciplined by a  
516 public employer for the first positive confirmed test result if  
517 the drug confirmed is an illicit drug under s. 893.03. A  
518 special-risk employee who is participating in an employee  
519 assistance program or drug rehabilitation program may not be  
520 allowed to continue to work in any special-risk or mandatory-  
521 testing ~~safety-sensitive~~ position of the public employer, but  
522 may be assigned to a position other than a mandatory-testing

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523 ~~safety-sensitive~~ position or placed on leave while the employee  
524 is participating in the program. However, the employee shall be  
525 permitted to use any accumulated annual leave credits before  
526 leave may be ordered without pay.

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

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

530 ~~(b) Drug-free workplace program requirements pursuant to~~  
531 ~~this section shall be a mandatory topic of negotiations with any~~  
532 ~~certified collective bargaining agent for nonfederal public~~  
533 ~~sector employers that operate under a collective bargaining~~  
534 ~~agreement.~~

535 (13) ~~(14)~~ APPLICABILITY.—A drug testing policy or procedure  
536 adopted by an employer pursuant to this chapter shall be applied  
537 equally to all employee classifications where the employee is  
538 subject to workers' compensation coverage.

539 (14) ~~(15)~~ STATE CONSTRUCTION CONTRACTS.—Each construction  
540 contractor regulated under part I of chapter 489, and each  
541 electrical contractor and alarm system contractor regulated  
542 under part II of chapter 489, who contracts to perform  
543 construction work under a state contract for educational  
544 facilities governed by chapter 1013, for public property or  
545 publicly owned buildings governed by chapter 255, or for state  
546 correctional facilities governed by chapter 944 shall implement  
547 a drug-free workplace program under this section.

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

550 944.474 Legislative intent; employee wellness program; drug  
551 and alcohol testing.—

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

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

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581 rules pursuant to ss. 120.536(1) and 120.54 that are necessary  
582 to administer this subsection.

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