

By the Committee on Governmental Oversight and Accountability;
and Senator Hays

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

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

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59 Health Care Administration; requiring that a public
60 sector employer assign a public sector employee to a
61 position other than a mandatory-testing position if
62 the employee enters an employee assistance program or
63 alcohol and drug rehabilitation program; removing
64 provisions related to collective bargaining rights for
65 nonfederal public sector employers; conforming cross-
66 references; amending s. 944.474, F.S.; revising
67 provisions governing employees of the state
68 correctional system, to conform to changes made by the
69 act; providing an effective date.

70

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

72

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

76 112.0455 Drug-Free Workplace Act.—

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

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

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

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88 metabolites.

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

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

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

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

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

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

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117 remuneration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

174 (c) *Random testing.*—An employer may conduct random testing

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175 once every 3 months. The random sample chosen for the testing
176 must be computer-generated by an independent third party. A
177 random sample may not constitute more than 10 percent of the
178 total employee population.

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

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

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

194 (a) A sample shall be collected with due regard to the
195 privacy of the individual providing the sample, and in a manner
196 reasonably calculated to prevent substitution or contamination
197 of the sample.

198 (b) Specimen collection shall be documented, and the
199 documentation procedures shall include:

200 1. Labeling of specimen containers so as to reasonably
201 preclude the likelihood of erroneous identification of test
202 results.

203 2. A form for the employee or job applicant to provide any

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

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

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

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

222 1. A physician, a physician's assistant, a registered
223 professional nurse, a licensed practical nurse, a nurse
224 practitioner, or a certified paramedic who is present at the
225 scene of an accident for the purpose of rendering emergency
226 medical service or treatment.

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

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

232 (g) Any drug test conducted or requested by an employer may

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233 occur before, during, or immediately after the regular work
234 period of the employee, and shall be deemed to be performed
235 during work time for the purposes of determining compensation
236 and benefits for the employee.

237 (h) Every specimen that produces a positive confirmed
238 result shall be preserved by the licensed laboratory that
239 conducts the confirmation test for a period of at least 210 days
240 from the time the results of the positive confirmation test are
241 mailed or otherwise delivered to the employer. However, if an
242 employee or job applicant undertakes an administrative or legal
243 challenge to the test result, the employee or job applicant
244 shall notify the laboratory and the sample shall be retained by
245 the laboratory until the case or administrative appeal is
246 settled. During the 180-day period after written notification of
247 a positive test result, the employee or job applicant who has
248 provided the specimen shall be permitted by the employer to have
249 a portion of the specimen retested, at the employee or job
250 applicant's expense, at another laboratory, licensed and
251 approved by the Agency for Health Care Administration, chosen by
252 the employee or job applicant. The second laboratory must test
253 at equal or greater sensitivity for the drug in question as the
254 first laboratory. The first laboratory that ~~which~~ performed the
255 test for the employer is ~~shall be~~ responsible for the transfer
256 of the portion of the specimen to be retested, and for the
257 integrity of the chain of custody during such transfer.

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

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262 options available to the employee or job applicant.

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

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

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

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

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

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

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291 ~~program, and:~~

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

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

304 ~~2. An employee in a safety-sensitive position shall be~~
305 ~~placed by the employer in a non-safety-sensitive position, or if~~
306 ~~such position is unavailable, on leave status while~~
307 ~~participating in an employee assistance program or an alcohol~~
308 ~~and drug rehabilitation program. If placed on leave status~~
309 ~~without pay, the employee shall be permitted to use any~~
310 ~~accumulated leave credits prior to being placed on leave without~~
311 ~~pay.~~

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

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

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

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

333 (q)~~(r)~~ An employer shall pay the cost of all drug tests,
334 initial and confirmation, which the employer requires of
335 employees.

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

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

347 (t)~~(u)~~ If ~~Where~~ testing is conducted based on reasonable
348 suspicion, each employer shall promptly detail in writing the

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349 circumstances which formed the basis of the determination that
350 reasonable suspicion existed to warrant the testing. A copy of
351 this documentation shall be given to the employee upon request
352 and the original documentation shall be kept confidential and
353 exempt from the provisions of s. 119.07(1) by the employer
354 pursuant to subsection (11) and retained by the employer for at
355 least 1 year.

356 (u)~~(v)~~ If an employee is unable to participate in
357 outpatient rehabilitation, the employee may be placed on leave
358 status while participating in an employee assistance program or
359 an alcohol and drug rehabilitation program. If placed on leave-
360 without-pay status, the employee shall be permitted to use any
361 accumulated leave credits prior to being placed on leave without
362 pay. Upon successful completion of an employee assistance
363 program or an alcohol and drug rehabilitation program, the
364 employee shall be reinstated to the same or equivalent position
365 that was held prior to such rehabilitation.

366 (10) EMPLOYER PROTECTION.—

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

377 1. If an employer refers an employee to an employee

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378 assistance program or an alcohol and drug rehabilitation
379 program, the employer must determine whether the employee is
380 able to safely and effectively perform the job duties assigned
381 to the employee while the employee participates in such a
382 program.

383 2. An employee whose assigned duties require the employee
384 to carry a firearm, work closely with an employee who carries a
385 firearm, perform life-threatening procedures, work with heavy or
386 dangerous machinery, work as a safety inspector, work with
387 children, work with detainees in the correctional system, work
388 with confidential information or documents pertaining to
389 criminal investigations, work with controlled substances, hold a
390 position subject to s. 110.1127, or hold a position in which a
391 momentary lapse in attention could result in injury or death to
392 another person, is deemed unable to safely and effectively
393 perform the job duties assigned to the employee while the
394 employee participates in the employee assistance program or
395 alcohol and drug rehabilitation program.

396 3. If an employer refers an employee to an employee
397 assistance program or an alcohol and drug rehabilitation program
398 and the employer determines that the employee is unable, or the
399 employee is deemed unable, to safely and effectively perform the
400 job duties assigned to the employee before he or she completes
401 such a program, the employer shall place the employee in a job
402 assignment that the employer determines the employee can safely
403 and effectively perform while participating in the program.

404 4. If a job assignment in which the employee may safely and
405 effectively perform is unavailable, the employer shall place the
406 employee on leave status while the employee is participating in

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407 an employee assistance program or an alcohol and drug
408 rehabilitation program. If placed on leave status without pay,
409 the employee may use accumulated leave credits before being
410 placed on leave without pay.

411 (i) ~~Nothing in~~ This section does not ~~shall be construed to~~
412 prohibit an employer from conducting medical screening or other
413 tests required by any statute, rule, or regulation for the
414 purpose of monitoring exposure of employees to toxic or other
415 unhealthy substances in the workplace or in the performance of
416 job responsibilities. Such screening or tests shall be limited
417 to the specific substances expressly identified in the
418 applicable statute, rule, or regulation, unless prior written
419 consent of the employee is obtained for other tests.

420 ~~(j) An employer shall place a safety-sensitive position~~
421 ~~employee whose drug test result is confirmed positive in a non-~~
422 ~~safety-sensitive position, or if such a position is unavailable,~~
423 ~~on leave status while the employee participates in an employee~~
424 ~~assistance program or an alcohol and drug rehabilitation~~
425 ~~program. If placed on leave status without pay, the employee~~
426 ~~shall be permitted to use any accumulated leave credits prior to~~
427 ~~being placed on leave without pay.~~

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

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436 Section 2. Paragraphs (j) and (o) of subsection (1),
437 subsection (2), paragraph (g) of subsection (7), and subsections
438 (11), (13), (14), and (15) of section 440.102, Florida Statutes,
439 are amended to read:

440 440.102 Drug-free workplace program requirements.—The
441 following provisions apply to a drug-free workplace program
442 implemented pursuant to law or to rules adopted by the Agency
443 for Health Care Administration:

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

446 (j) "Job applicant" means a person who has applied for a
447 position with an employer and has been offered employment
448 conditioned upon successfully passing a drug test, and may have
449 begun work pending the results of the drug test. For a public
450 employer, "job applicant" means only a person who has applied
451 for a special-risk or mandatory-testing ~~safety-sensitive~~
452 position.

453 (o) "Mandatory-testing position" means, with respect to a
454 public employer, a job assignment that requires the employee to
455 carry a firearm, work closely with an employee who carries a
456 firearm, perform life-threatening procedures, work with heavy or
457 dangerous machinery, work as a safety inspector, work with
458 children, work with detainees in the correctional system, work
459 with confidential information or documents pertaining to
460 criminal investigations, or work with controlled substances; a
461 job assignment that requires an employee security background
462 check pursuant to s. 110.1127; or a job assignment in which a
463 momentary lapse in attention could result in injury or death to
464 another person ~~"Safety-sensitive position" means, with respect~~

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465 ~~to a public employer, a position in which a drug impairment~~
466 ~~constitutes an immediate and direct threat to public health or~~
467 ~~safety, such as a position that requires the employee to carry a~~
468 ~~firearm, perform life-threatening procedures, work with~~
469 ~~confidential information or documents pertaining to criminal~~
470 ~~investigations, or work with controlled substances; a position~~
471 ~~subject to s. 110.1127; or a position in which a momentary lapse~~
472 ~~in attention could result in injury or death to another person.~~

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

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494 (7) EMPLOYER PROTECTION.—

495 (g) This section does not prohibit an employer from
496 conducting medical screening or other tests required, permitted,
497 or not disallowed by any statute, rule, or regulation for the
498 purpose of monitoring exposure of employees to toxic or other
499 unhealthy substances in the workplace or in the performance of
500 job responsibilities. Such screening or testing is limited to
501 the specific substances expressly identified in the applicable
502 statute, rule, or regulation, unless prior written consent of
503 the employee is obtained for other tests. Such screening or
504 testing need not be in compliance with the rules adopted by the
505 Agency for Health Care Administration under this chapter or
506 under s. 112.0455. A public employer may, through the use of an
507 unbiased selection procedure, conduct random drug tests of
508 employees occupying mandatory-testing ~~safety-sensitive~~ or
509 special-risk positions if the testing is performed in accordance
510 with drug-testing rules adopted by the Agency for Health Care
511 Administration and the department. ~~If applicable, random drug~~
512 ~~testing must be specified in a collective bargaining agreement~~
513 ~~as negotiated by the appropriate certified bargaining agent~~
514 ~~before such testing is implemented.~~

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

517 (a) If an employee who is employed by a public employer in
518 a mandatory-testing ~~safety-sensitive~~ position enters an employee
519 assistance program or drug rehabilitation program, the employer
520 must assign the employee to a position other than a mandatory-
521 testing ~~safety-sensitive~~ position or, if such position is not
522 available, place the employee on leave while the employee is

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523 participating in the program. However, the employee shall be
524 permitted to use any accumulated annual leave credits before
525 leave may be ordered without pay.

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

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

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

542 ~~(b) Drug-free workplace program requirements pursuant to~~
543 ~~this section shall be a mandatory topic of negotiations with any~~
544 ~~certified collective bargaining agent for nonfederal public~~
545 ~~sector employers that operate under a collective bargaining~~
546 ~~agreement.~~

547 (13) ~~(14)~~ APPLICABILITY.—A drug testing policy or procedure
548 adopted by an employer pursuant to this chapter shall be applied
549 equally to all employee classifications where the employee is
550 subject to workers' compensation coverage.

551 (14) ~~(15)~~ STATE CONSTRUCTION CONTRACTS.—Each construction

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552 contractor regulated under part I of chapter 489, and each
553 electrical contractor and alarm system contractor regulated
554 under part II of chapter 489, who contracts to perform
555 construction work under a state contract for educational
556 facilities governed by chapter 1013, for public property or
557 publicly owned buildings governed by chapter 255, or for state
558 correctional facilities governed by chapter 944 shall implement
559 a drug-free workplace program under this section.

560 Section 3. Section 944.474, Florida Statutes, is amended to
561 read:

562 944.474 Legislative intent; employee wellness program; drug
563 and alcohol testing.—

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

574 (2) An employee ~~Under no circumstances shall employees~~ of
575 the department may not test positive for illegal use of
576 controlled substances. An employee of the department may not be
577 under the influence of alcohol while on duty. In order to ensure
578 that these prohibitions are adhered to by all employees of the
579 department and notwithstanding s. 112.0455, the department may
580 develop a program for the drug testing of all job applicants and

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581 for the random drug testing of all employees. The department may
582 randomly evaluate employees for the contemporaneous use or
583 influence of alcohol through the use of alcohol tests and
584 observation methods. Notwithstanding s. 112.0455, the department
585 may develop a program for the reasonable suspicion drug testing
586 of employees who are in mandatory-testing ~~safety-sensitive~~ or
587 special risk positions, as defined in s. 112.0455(5) or s.
588 440.102(1)(o), respectively, for the controlled substances
589 listed in s. 893.03(3)(d). The reasonable suspicion drug testing
590 authorized by this subsection shall be conducted in accordance
591 with s. 112.0455, but may also include testing upon reasonable
592 suspicion based on violent acts or violent behavior of an
593 employee who is on or off duty. The department shall adopt rules
594 pursuant to ss. 120.536(1) and 120.54 that are necessary to
595 administer this subsection.

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