

HB 1435

2014

1 A bill to be entitled

2 An act relating to drug testing of public officers;  
3 providing legislative findings and intent; creating s.  
4 111.09, F.S.; providing a short title; providing  
5 definitions; requiring certain public officers to  
6 undergo drug testing; providing procedures for drug  
7 testing and challenging the results of drug tests;  
8 requiring the Commission on Ethics to review and  
9 investigate positive drug tests and refer public  
10 officers with positive test results to employee  
11 assistance or drug rehabilitation programs; requiring  
12 a public officer who refuses to undergo drug testing  
13 to resign from office; providing conditions under  
14 which a public officer is subject to removal from  
15 office; requiring the Agency for Health Care  
16 Administration to adopt rules; providing an effective  
17 date.

18  
19 Be It Enacted by the Legislature of the State of Florida:

20  
21 Section 1. The Legislature finds that, in accordance with  
22 the State Constitution, all political power is inherent in the  
23 people, a public office is a public trust, and the people shall  
24 have the right to secure and sustain that trust against abuse.  
25 Therefore, recognizing that public officers are not above the  
26 law and should conduct themselves according to the law, and in

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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27 order to uphold the highest standards of ethics, promote the  
 28 public interest, and maintain the respect of the people in their  
 29 government, it is the intent of this act to ensure that public  
 30 officers are sober as they undertake their responsibility to  
 31 make policy decisions that affect the health, safety, and  
 32 welfare of the citizens they represent.

33 Section 2. Section 111.09, Florida Statutes, is created to  
 34 read:

35 111.09 Drug-Free Public Officers Act.-

36 (1) SHORT TITLE.-This section may be cited as the "Drug-  
 37 Free Public Officers Act."

38 (2) DEFINITIONS.-As used in this section:

39 (a) The following terms have the same meanings as provided  
 40 in s. 112.0455:

- 41 1. "Chain of custody."
- 42 2. "Confirmation test," "confirmed test," or "confirmed  
 43 drug test."
- 44 3. "Drug."
- 45 4. "Drug test" or "test."
- 46 5. "Employee assistance program."
- 47 6. "Initial drug test."
- 48 7. "Prescription or nonprescription medication."
- 49 8. "Specimen."

50 (b) "Public officer" means an individual holding an  
 51 elected federal office, a state or local constitutional office,  
 52 or an elected municipal, local school district, or independent

53 special district office. The term includes justices of the  
54 Supreme Court, district court of appeal judges, circuit court  
55 judges, and county court judges. For an elected office listed in  
56 this paragraph, the term also includes an individual appointed  
57 to such office.

58 (3) INITIAL TESTING.—A public officer shall undergo a drug  
59 test no later than 60 days after taking office and no later than  
60 60 days after reelection or reappointment to an office. For a  
61 state or local officer, the state or political subdivision to  
62 which the public officer is elected or appointed shall bear the  
63 cost of the test. For a federal officer, unless borne by the  
64 Federal Government, the public officer shall personally bear the  
65 cost of the test.

66 (4) PROCEDURES.—All specimen collection and testing for  
67 drugs under this section shall be performed in accordance with  
68 the following procedures:

69 (a) A sample shall be collected with due regard to the  
70 privacy of the officer providing the sample and in a manner  
71 reasonably calculated to prevent substitution or contamination  
72 of the sample.

73 (b) Specimen collection shall be documented, and the  
74 documentation procedures shall include:

75 1. Labeling of specimen containers so as to reasonably  
76 preclude the likelihood of erroneous identification of test  
77 results.

78 2. A form for the public officer to provide any

79 information that the public officer considers relevant to the  
80 test, including identification of currently or recently used  
81 prescription or nonprescription medication or other relevant  
82 medical information. The form shall provide notice of the most  
83 common medications by brand name or common name, as applicable,  
84 as well as by chemical name, which may alter or affect the  
85 results of a drug test. A public officer's providing of such  
86 information does not preclude administration of the drug test  
87 but shall be taken into account in interpreting any positive  
88 confirmed results.

89 (c) Specimen collection, storage, and transportation to  
90 the testing site shall be performed in a manner that will  
91 reasonably preclude specimen contamination or adulteration.

92 (d) Each initial and confirmation test conducted under  
93 this section, not including the taking or collecting of a  
94 specimen to be tested, shall be conducted by a licensed  
95 laboratory as described in s. 112.0455(12).

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

98 1. A physician, a physician assistant, a registered  
99 professional nurse, a licensed practical nurse, a nurse  
100 practitioner, or a certified paramedic who is present at the  
101 scene of an accident for the purpose of rendering emergency  
102 medical service or treatment.

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

104 (f) A person who collects or takes a specimen for a drug

105 test conducted pursuant to this section shall collect an amount  
106 sufficient for two drug tests as determined by the Agency for  
107 Health Care Administration.

108 (g) The licensed laboratory that conducts the confirmation  
109 test shall deliver the results of a positive confirmation test  
110 to the public officer and the Commission on Ethics.

111 (h) The licensed laboratory that conducts the confirmation  
112 test shall preserve every specimen that produces a positive  
113 confirmed result for at least 210 days after the results of the  
114 positive confirmation test are delivered to the Commission on  
115 Ethics. However, if a public officer undertakes a legal  
116 challenge to the test result, the public officer shall notify  
117 the laboratory and the sample shall be retained by the  
118 laboratory until the case or appeal is settled. During the 180-  
119 day period after written notification of a positive test result,  
120 the public officer who has provided the specimen shall be  
121 permitted to have a portion of the specimen retested, at the  
122 public officer's expense, at another laboratory licensed and  
123 approved by the Agency for Health Care Administration chosen by  
124 the public officer. The second laboratory must test at equal or  
125 greater sensitivity for the drug in question as the first  
126 laboratory. The first laboratory that performed the test is  
127 responsible for the transfer of the portion of the specimen to  
128 be retested and for the integrity of the chain of custody during  
129 such transfer.

130 (i) Within 5 working days after receiving notice of a

131 positive confirmed test result, the public officer may submit  
132 information to the Commission on Ethics explaining or contesting  
133 the test results and explaining why the results do not  
134 constitute a violation of this section.

135 (j) If the public officer's explanation or challenge of  
136 the positive test results is unsatisfactory to the Commission on  
137 Ethics, a written explanation as to why the public officer's  
138 explanation is unsatisfactory, along with the report of positive  
139 results, shall be provided by Commission on Ethics to the public  
140 officer.

141 (k) Upon receipt of a positive test report, the Commission  
142 on Ethics shall refer the public officer to an employee  
143 assistance program or an alcohol and drug rehabilitation program  
144 in which the public officer may participate at the public  
145 officer's expense or pursuant to a health insurance plan.

146 (5) CONFIRMATION TESTING.—

147 (a) Only licensed laboratories as described in s.  
148 112.0445(12) shall conduct confirmation drug tests.

149 (b) All positive initial tests shall be confirmed using  
150 gas chromatography/mass spectrometry (GC/MS) or an equivalent or  
151 more accurate scientifically accepted method approved by the  
152 Agency for Health Care Administration as such technology becomes  
153 available in a cost-effective form.

154 (6) REFUSAL.—A public officer who refuses to undergo the  
155 drug testing required by this section shall resign the public  
156 office that he or she holds in the manner provided in s.

157 99.012(3)(e). For a public officer who refuses to undergo  
158 initial testing under subsection (3), the resignation must be  
159 effective no later than 60 days after the public officer takes  
160 office. For a public officer who refuses to undergo any other  
161 drug testing required by this section, the resignation must be  
162 effective immediately upon such refusal.

163 (7) CONVICTION FOR CERTAIN OFFENSES.—A public officer who  
164 is convicted or found guilty of, or enters a plea of nolo  
165 contendere to, a felony drug offense is subject to removal from  
166 office pursuant to part V of chapter 112.

167 (8) RULES.—The Agency for Health Care Administration shall  
168 adopt rules to administer this section.

169 Section 3. This act shall take effect July 1, 2014.