

By Senator Hays

20-00710D-12

20121358

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

20-00710D-12

20121358

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

20-00710D-12

20121358

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

20-00710D-12

20121358

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

20-00710D-12

20121358

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.

20-00710D-12

20121358

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

20-00710D-12

20121358

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.

20-00710D-12

20121358__

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

20-00710D-12

20121358

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

20-00710D-12

20121358

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~~

20-00710D-12

20121358

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

20-00710D-12

20121358

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 ~~Ne~~ 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

20-00710D-12

20121358

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

20-00710D-12

20121358

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

20-00710D-12

20121358

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

20-00710D-12

20121358

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

20-00710D-12

20121358

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

20-00710D-12

20121358

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

20-00710D-12

20121358

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.—

20-00710D-12

20121358

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

20-00710D-12

20121358__

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.