

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

29 alcohol and drug rehabilitation program; deeming that
30 certain specified job activities cannot be performed
31 safely and effectively while the employee is
32 participating in the employee assistance program or
33 alcohol and drug rehabilitation program; requiring the
34 employer to transfer the employee to a job assignment
35 that he or she can perform safely and effectively
36 while the employee participates in the employee
37 assistance program or alcohol and drug rehabilitation
38 program; requiring the employer to place the employee
39 on leave status while the employee is participating in
40 an employee assistance program or an alcohol and drug
41 rehabilitation program if such a position is
42 unavailable; authorizing the employee to use
43 accumulated leave credits before being placed on leave
44 without pay; amending s. 440.102, F.S.; revising the
45 definition of the term "job applicant" as it pertains
46 to a public employer; removing the definition of the
47 term "safety-sensitive position" and replacing it with
48 the definition for the term "mandatory-testing
49 position;" providing that an employer remains
50 qualified for an insurer rate plan that discounts
51 rates for workers' compensation and employer's
52 liability insurance policies if the employer maintains
53 a drug-free workplace program that is broader in scope
54 than that provided for by the standards and procedures
55 established in the act; authorizing a public employer,
56 using an unbiased selection procedure, to conduct

57 random drug tests of employees occupying mandatory-
58 testing or special-risk positions if the testing is
59 performed in accordance with drug-testing rules
60 adopted by the Agency for Health Care Administration;
61 requiring that a public sector employer assign a
62 public sector employee to a position other than a
63 mandatory-testing position if the employee enters an
64 employee assistance program or drug rehabilitation
65 program; amending s. 944.474, F.S.; revising
66 provisions governing employees of the state
67 correctional system, to conform to changes made by the
68 act; providing an effective date.

69
70 Be It Enacted by the Legislature of the State of Florida:

71
72 Section 1. Subsections (5), (7), and (8) and paragraphs
73 (h), (i), (j), and (k) of subsection (10) of section 112.0455,
74 Florida Statutes, are amended to read:

75 112.0455 Drug-Free Workplace Act.—

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

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

84 (b) "Drug test" or "test" means any chemical, biological,

85 or physical instrumental analysis administered for the purpose
86 of determining the presence or absence of a drug or its
87 metabolites.

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

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

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

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

112 (g) "Employee" means a ~~any~~ person who works for salary,

113 wages, or other remuneration for an employer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

164 (7) TYPES OF TESTING.—Drug testing must be conducted
 165 within each agency's appropriation. An employer may conduct ~~is~~
 166 ~~authorized,~~ but is not required~~7~~ to conduct~~1~~, 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
175 once every 3 months. The random sample of employees chosen for
176 testing must be computer-generated by an independent third
177 party. A random sample may not constitute more than 10 percent
178 of the total employee population.

179 (d) ~~(e)~~ Routine fitness for duty.—An employer may require
180 an 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
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
214 the 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
217 this section, not including the taking or collecting of a
218 specimen to be tested, shall be conducted by a licensed
219 laboratory as described in subsection (12).

220 (e) A specimen for a drug test may be taken or collected
221 by 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
233 | may 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
 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
 280 to hire, discriminate against, or request or require

281 rehabilitation of an employee or job applicant on the sole basis
282 of a positive test result that has not been verified by a
283 confirmation test.

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

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

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

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

305 ~~2. An employee in a safety-sensitive position shall be~~
306 ~~placed by the employer in a non-safety-sensitive position, or if~~
307 ~~such position is unavailable, on leave status while~~
308 ~~participating in an employee assistance program or an alcohol~~

309 ~~and drug rehabilitation program. If placed on leave status~~
 310 ~~without pay, the employee shall be permitted to use any~~
 311 ~~accumulated leave credits prior to being placed on leave without~~
 312 ~~pay.~~

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

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

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

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

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

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

339 (s)~~(t)~~ An ~~Ne~~ employer may not ~~shall~~ discharge, discipline,
340 or discriminate against an employee solely upon voluntarily
341 seeking treatment, while under the employ of the employer, for a
342 drug-related problem if the employee has not previously tested
343 positive for drug use, entered an employee assistance program
344 for drug-related problems, or entered an alcohol and drug
345 rehabilitation program. However, special risk employees may be
346 subject to discharge or disciplinary action when the presence of
347 illicit drugs, pursuant to s. 893.13, is confirmed.

348 (t)~~(u)~~ If ~~Where~~ testing is conducted based on reasonable
349 suspicion, each employer shall promptly detail in writing the
350 circumstances which formed the basis of the determination that
351 reasonable suspicion existed to warrant the testing. A copy of
352 this documentation shall be given to the employee upon request
353 and the original documentation shall be kept confidential and
354 exempt from the provisions of s. 119.07(1) by the employer
355 pursuant to subsection (11) and retained by the employer for at
356 least 1 year.

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

365 employee shall be reinstated to the same or equivalent position
366 that was held prior to such rehabilitation.

367 (10) EMPLOYER PROTECTION.—

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

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

385 2. An employee whose assigned duties require the employee
386 to carry a firearm, work closely with an employee who carries a
387 firearm, perform life-threatening procedures, work with heavy or
388 dangerous machinery, work as a safety inspector, work with
389 children, work with detainees in the correctional system, work
390 with confidential information or documents pertaining to
391 criminal investigations, work with controlled substances, hold a
392 position subject to s. 110.1127, or hold a position in which a

393 momentary lapse in attention could result in injury or death to
394 another person, is deemed unable to safely and effectively
395 perform the job duties assigned to the employee while the
396 employee participates in the employee assistance program or the
397 alcohol and drug rehabilitation program.

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

409 4. If a job assignment in which the employee may safely
410 and effectively perform is unavailable, the employer shall place
411 the employee on leave status while the employee is participating
412 in an employee assistance program or an alcohol and drug
413 rehabilitation program. If placed on leave status without pay,
414 the employee may use accumulated leave credits before being
415 placed on leave without pay.

416 (i) ~~Nothing in~~ This section does not ~~shall be construed to~~
417 prohibit an employer from conducting medical screening or other
418 tests required by any statute, rule, or regulation for the
419 purpose of monitoring exposure of employees to toxic or other
420 unhealthy substances in the workplace or in the performance of

421 job responsibilities. Such screening or tests shall be limited
422 to the specific substances expressly identified in the
423 applicable statute, rule, or regulation, unless prior written
424 consent of the employee is obtained for other tests.

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

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

441 Section 2. Paragraphs (j) and (o) of subsection (1),
442 subsection (2), paragraph (g) of subsection (7), and subsection
443 (11) of section 440.102, Florida Statutes, are amended to read:

444 440.102 Drug-free workplace program requirements.—The
445 following provisions apply to a drug-free workplace program
446 implemented pursuant to law or to rules adopted by the Agency
447 for Health Care Administration:

448 (1) DEFINITIONS.—Except where the context otherwise

449 requires, as used in this act:

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

457 (o) "Mandatory-testing position" means, with respect to a
458 public employer, a job assignment that requires the employee to
459 carry a firearm, work closely with an employee who carries a
460 firearm, perform life-threatening procedures, work with heavy or
461 dangerous machinery, work as a safety inspector, work with
462 children, work with detainees in the correctional system, work
463 with confidential information or documents pertaining to
464 criminal investigations, work with controlled substances, or a
465 job assignment that requires an employee security background
466 check, pursuant to s. 110.1127, or a job assignment in which a
467 momentary lapse in attention could result in injury or death to
468 another person. "Safety-sensitive position" means, with respect
469 ~~to a public employer, a position in which a drug impairment~~
470 ~~constitutes an immediate and direct threat to public health or~~
471 ~~safety, such as a position that requires the employee to carry a~~
472 ~~firearm, perform life-threatening procedures, work with~~
473 ~~confidential information or documents pertaining to criminal~~
474 ~~investigations, or work with controlled substances; a position~~
475 ~~subject to s. 110.1127; or a position in which a momentary lapse~~
476 ~~in attention could result in injury or death to another person.~~

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

498 (7) EMPLOYER PROTECTION.—

499 (g) This section does not prohibit an employer from
500 conducting medical screening or other tests required, permitted,
501 or not disallowed by any statute, rule, or regulation for the
502 purpose of monitoring exposure of employees to toxic or other
503 unhealthy substances in the workplace or in the performance of
504 job responsibilities. Such screening or testing is limited to

505 the specific substances expressly identified in the applicable
 506 statute, rule, or regulation, unless prior written consent of
 507 the employee is obtained for other tests. Such screening or
 508 testing need not be in compliance with the rules adopted by the
 509 Agency for Health Care Administration under this chapter or
 510 under s. 112.0455. A public employer may, through the use of an
 511 unbiased selection procedure, conduct random drug tests of
 512 employees occupying mandatory-testing ~~safety-sensitive~~ or
 513 special-risk positions if the testing is performed in accordance
 514 with drug-testing rules adopted by the Agency for Health Care
 515 Administration and the department. ~~If applicable, random drug~~
 516 ~~testing must be specified in a collective bargaining agreement~~
 517 ~~as negotiated by the appropriate certified bargaining agent~~
 518 ~~before such testing is implemented.~~

519 (11) PUBLIC EMPLOYEES IN MANDATORY-TESTING ~~SAFETY-~~
 520 ~~SENSITIVE~~ OR SPECIAL-RISK POSITIONS.-

521 (a) If an employee who is employed by a public employer in
 522 a mandatory-testing ~~safety-sensitive~~ position enters an employee
 523 assistance program or drug rehabilitation program, the employer
 524 must assign the employee to a position other than a mandatory-
 525 testing ~~safety-sensitive~~ position or, if such position is not
 526 available, place the employee on leave while the employee is
 527 participating in the program. However, the employee shall be
 528 permitted to use any accumulated annual leave credits before
 529 leave may be ordered without pay.

530 (b) An employee who is employed by a public employer in a
 531 special-risk position may be discharged or disciplined by a
 532 public employer for the first positive confirmed test result if

CS/CS/CS/HB 1205

2012

533 the drug confirmed is an illicit drug under s. 893.03. A
534 special-risk employee who is participating in an employee
535 assistance program or drug rehabilitation program may not be
536 allowed to continue to work in any special-risk or mandatory-
537 testing ~~safety-sensitive~~ position of the public employer, but
538 may be assigned to a position other than a mandatory-testing
539 ~~safety-sensitive~~ position or placed on leave while the employee
540 is participating in the program. However, the employee shall be
541 permitted to use any accumulated annual leave credits before
542 leave may be ordered without pay.

543 Section 3. Section 944.474, Florida Statutes, is amended
544 to read:

545 944.474 Legislative intent; employee wellness program;
546 drug and alcohol testing.—

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

557 (2) An employee ~~Under no circumstances shall employees of~~
558 the department may not test positive for illegal use of
559 controlled substances. An employee of the department may not be
560 under the influence of alcohol while on duty. In order to ensure

CS/CS/CS/HB 1205

2012

561 that these prohibitions are adhered to by all employees of the
562 department and notwithstanding s. 112.0455, the department may
563 develop a program for the drug testing of all job applicants and
564 for the random drug testing of all employees. The department may
565 randomly evaluate employees for the contemporaneous use or
566 influence of alcohol through the use of alcohol tests and
567 observation methods. Notwithstanding s. 112.0455, the department
568 may develop a program for the reasonable suspicion drug testing
569 of employees who are in mandatory-testing positions, as defined
570 in s. 440.102(1)(o), ~~safety-sensitive~~ or special risk positions,
571 as defined in s. 112.0455(5), for the controlled substances
572 listed in s. 893.03(3)(d). The reasonable suspicion drug testing
573 authorized by this subsection shall be conducted in accordance
574 with s. 112.0455, but may also include testing upon reasonable
575 suspicion based on violent acts or violent behavior of an
576 employee who is on or off duty. The department shall adopt rules
577 pursuant to ss. 120.536(1) and 120.54 that are necessary to
578 administer this subsection.

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