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2012 Legislature

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An act relating to drug-free workplaces; amending s. 112.0455, F.S.; revising the definition of the term "job applicant," defining the term "random testing," and removing the definition of the term "safety-sensitive position" for purposes of the Drug-Free Workplace Act; requiring drug testing to be conducted within each state agency's appropriation; authorizing a state agency to conduct random drug testing every 3 months; providing testing selection requirements; removing provisions prohibiting a state agency from discharging or disciplining an employee under certain circumstances based on the employee's first positive confirmed drug test; removing provisions limiting the circumstances under which an agency may discharge an employee in a special risk or safety-sensitive position; providing that an agency may discharge or discipline an employee following a first-time positive confirmed drug test result; authorizing an agency to refer an employee to an employee assistance program or an alcohol and drug rehabilitation program if the employee is not discharged; requiring participation in an employee assistance program or an alcohol and drug rehabilitation program at the employee's own expense or at the expense of a health insurance plan; requiring the employer to determine if the employee is able to safely and effectively perform the job duties assigned to the employee while the employee is

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

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57 using an unbiased selection procedure, to conduct  
 58 random drug tests of employees occupying mandatory-  
 59 testing or special-risk positions if the testing is  
 60 performed in accordance with drug-testing rules  
 61 adopted by the Agency for Health Care Administration;  
 62 requiring that a public sector employer assign a  
 63 public sector employee to a position other than a  
 64 mandatory-testing position if the employee enters an  
 65 employee assistance program or drug and alcohol  
 66 rehabilitation program; amending s. 944.474, F.S.;  
 67 revising 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.

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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  
 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.

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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  
 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

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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.

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 (1) ~~(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.—Drug testing must be conducted  
166 within each agency's appropriation. An employer may conduct is  
167 authorized, but is not required, to conduct, the following types  
168 of drug tests:

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

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

175 (c) Random testing.—An employer may conduct random testing  
 176 once every 3 months. The random sample of employees chosen for  
 177 testing must be computer-generated by an independent third  
 178 party. A random sample may not constitute more than 10 percent  
 179 of the total employee population.

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

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

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

195 (a) A sample shall be collected with due regard to the  
 196 privacy of the individual providing the sample, and in a manner

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197 reasonably calculated to prevent substitution or contamination  
 198 of the sample.

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

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

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

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

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

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

223 1. A physician, a physician's assistant, a registered  
 224 professional nurse, a licensed practical nurse, a nurse

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225 practitioner, or a certified paramedic who is present at the  
 226 scene of an accident for the purpose of rendering emergency  
 227 medical service or treatment.

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

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

233 (g) Any drug test conducted or requested by an employer  
 234 may occur before, during, or immediately after the regular work  
 235 period of the employee, and shall be deemed to be performed  
 236 during work time for the purposes of determining compensation  
 237 and benefits for the employee.

238 (h) Every specimen that produces a positive confirmed  
 239 result shall be preserved by the licensed laboratory that  
 240 conducts the confirmation test for a period of at least 210 days  
 241 from the time the results of the positive confirmation test are  
 242 mailed or otherwise delivered to the employer. However, if an  
 243 employee or job applicant undertakes an administrative or legal  
 244 challenge to the test result, the employee or job applicant  
 245 shall notify the laboratory and the sample shall be retained by  
 246 the laboratory until the case or administrative appeal is  
 247 settled. During the 180-day period after written notification of  
 248 a positive test result, the employee or job applicant who has  
 249 provided the specimen shall be permitted by the employer to have  
 250 a portion of the specimen retested, at the employee or job  
 251 applicant's expense, at another laboratory, licensed and  
 252 approved by the Agency for Health Care Administration, chosen by

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253 the employee or job applicant. The second laboratory must test  
 254 at equal or greater sensitivity for the drug in question as the  
 255 first laboratory. The first laboratory that ~~which~~ performed the  
 256 test for the employer is ~~shall be~~ responsible for the transfer  
 257 of the portion of the specimen to be retested, and for the  
 258 integrity of the chain of custody during such transfer.

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

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

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

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

280 (m) An ~~No~~ employer may not discharge, discipline, refuse

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281 to hire, discriminate against, or request or require  
 282 rehabilitation of an employee or job applicant on the sole basis  
 283 of a positive test result that has not been verified by a  
 284 confirmation test.

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

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

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

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

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

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

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

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

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

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

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

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337 employees.

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

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

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

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

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365 program or an alcohol and drug rehabilitation program, the  
 366 employee shall be reinstated to the same or equivalent position  
 367 that was held prior to such rehabilitation.

368 (10) EMPLOYER PROTECTION.—

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

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

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

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393 position subject to s. 110.1127, or hold a position in which a  
 394 momentary lapse in attention could result in injury or death to  
 395 another person, is deemed unable to safely and effectively  
 396 perform the job duties assigned to the employee while the  
 397 employee participates in the employee assistance program or the  
 398 alcohol and drug rehabilitation program.

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

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

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

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

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

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

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

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

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

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

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

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477 ~~in attention could result in injury or death to another person.~~

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

499 (7) EMPLOYER PROTECTION.—

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

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

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

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

531 | (b) An employee who is employed by a public employer in a  
 532 | special-risk position may be discharged or disciplined by a

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

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

546 944.474 Legislative intent; employee wellness program;  
 547 drug and alcohol testing.-

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

558 (2) An employee ~~Under no circumstances shall employees~~ of  
 559 the department may not test positive for illegal use of  
 560 controlled substances. An employee of the department may not be

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

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