

By Senator Myers

27-1260-98

1 A bill to be entitled
2 An act relating to human immunodeficiency virus
3 testing; amending s. 381.0035, F.S.; requiring
4 certain information related to HIV testing and
5 counseling to be included in HIV educational
6 courses; amending s. 381.004, F.S.; requiring
7 informed consent before an HIV test may be
8 ordered; requiring certain information to be
9 provided when informed consent is sought;
10 providing requirements with respect to
11 notification and release of test results;
12 authorizing certain disclosures of test
13 results; providing for court orders for testing
14 in specified circumstances; authorizing the
15 Department of Health to make inspections and
16 investigations; providing for emergency action
17 against a registration; providing requirements
18 for model protocols; providing penalties;
19 amending s. 384.25, F.S.; deleting provisions
20 relating to protocols and to notification to
21 school superintendents; amending s. 455.2226,
22 F.S.; requiring certain information related to
23 HIV testing to be included in HIV educational
24 courses for funeral directors and embalmers;
25 providing an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:

28
29 Section 1. Subsection (1) of section 381.0035, Florida
30 Statutes, is amended to read:

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1 381.0035 Educational course on human immunodeficiency
2 virus and acquired immune deficiency syndrome; employees and
3 clients of certain health care facilities.--

4 (1) The Department of Health shall require all
5 employees and clients of facilities licensed under chapters
6 393, 394, and 397 and employees of facilities licensed under
7 chapter 395 and parts II, III, IV, and VI of chapter 400 to
8 complete, biennially, a continuing educational course on the
9 modes of transmission, infection control procedures, clinical
10 management, and prevention of human immunodeficiency virus and
11 acquired immune deficiency syndrome with an emphasis on
12 appropriate behavior and attitude change. Such instruction
13 shall include information on current Florida law and its
14 impact on testing, confidentiality of test results, and
15 treatment of patients and any protocols and procedures
16 applicable to human immunodeficiency counseling and testing,
17 reporting, and partner notification issues pursuant to ss.
18 381.004 and 384.25.

19 Section 2. Subsections (2), (3), (4), (5), and (8) of
20 section 381.004, Florida Statutes, are amended, and subsection
21 (6) of that section is reenacted, to read:

22 381.004 Testing for human immunodeficiency virus.--

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

24 (a) "HIV test" means a test ordered after July 6,
25 1988, to determine the presence of the antibody or antigen to
26 human immunodeficiency virus or the presence of human
27 immunodeficiency virus infection.

28 (b) "HIV test result" means a laboratory report of a
29 human immunodeficiency virus test result entered into a
30 medical record on or after July 6, 1988, or any report or
31 notation in a medical record of a laboratory report of a human

1 immunodeficiency virus test. As used in this section, the
2 term "HIV test result" does not include test results reported
3 to a health care provider by a patient.

4 (c) "Significant exposure" means:

5 1. Exposure to blood or body fluids through
6 needlestick, instruments, or sharps;
7 2. Exposure of mucous membranes to visible blood or
8 body fluids, to which universal precautions apply according to
9 the National Centers for Disease Control and Prevention,
10 including, without limitations, the following body fluids:

11 a. Blood.

12 b. Semen.

13 c. Vaginal secretions.

14 d. Cerebro-spinal fluid (CSF).

15 e. Synovial fluid.

16 f. Pleural fluid.

17 g. Peritoneal fluid.

18 h. Pericardial fluid.

19 i. Amniotic fluid.

20 j. Laboratory specimens that contain HIV (e.g.,
21 suspensions of concentrated virus); or

22 3. Exposure of skin to visible blood or body fluids,
23 especially when the exposed skin is chapped, abraded, or
24 afflicted with dermatitis or the contact is prolonged or
25 involving an extensive area.

26 (d) "Preliminary HIV test" means an antibody screening
27 test, such as the enzyme-linked immunosorbent assays (ELISAs)
28 or the Single-Use Diagnostic System (SUDS).

29 (e)~~(d)~~ "Test subject" or "subject of the test" means
30 the person upon whom an HIV test is performed, or the person
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1 who has legal authority to make health care decisions for the
2 test subject.

3 (3) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED
4 CONSENT; RESULTS; COUNSELING; CONFIDENTIALITY.--

5 (a) No person in this state shall order ~~perform~~ a test
6 designed to identify the human immunodeficiency virus, or its
7 antigen or antibody, without first obtaining the informed
8 consent of the person upon whom the test is being performed,
9 except as specified in paragraph (i). Informed consent shall
10 be preceded by an explanation of the right to confidential
11 treatment of information identifying the subject of the test
12 and the results of the test to the extent provided by law.
13 Information shall also be provided on the fact that a positive
14 HIV test result will be reported to the county health
15 department with sufficient information to identify the test
16 subject and on the availability and location of sites at which
17 anonymous testing is performed. As required in paragraph
18 (4)(c), each county health unit shall maintain a list of sites
19 at which anonymous testing is performed, including the
20 locations, phone numbers, and hours of operation of the sites.
21 Consent need not be in writing provided there is documentation
22 in the medical record that the test has been explained and the
23 consent has been obtained.

24 (b) Except as provided in paragraph (i), informed
25 consent must be obtained from a legal guardian or other person
26 authorized by law when the person:

- 27 1. Is not competent, is incapacitated, or is otherwise
28 unable to make an informed judgment; or
29 2. Has not reached the age of majority, except as
30 provided in s. 384.30.

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1 (c) The person ordering the test or that person's
2 designee shall ensure that all reasonable efforts are made to
3 notify the test subject of positive test results.
4 Notification shall include information on the availability of
5 appropriate medical and support services, on the importance of
6 notifying partners who may have been exposed, and on
7 preventing transmission of HIV. When testing occurs in an
8 emergency room, detention facility, or other facility and the
9 test subject has been released before being notified of
10 positive test results, informing the county health department
11 for that department to notify the test subject fulfills this
12 responsibility.~~No person shall order a test without making~~
13 ~~available to the person tested, prior to the test, information~~
14 ~~regarding measures for the prevention of, exposure to, and~~
15 ~~transmission of human immunodeficiency virus. At the time an~~
16 ~~HIV test is ordered, the person ordering the test shall~~
17 ~~schedule a return visit with the test subject for the purpose~~
18 ~~of disclosing the test results and conducting posttest~~
19 ~~counseling as described in paragraph (e).~~

20 (d) No test result shall be determined as positive,
21 and no positive test result shall be revealed to any person,
22 without corroborating or confirmatory tests being conducted
23 except in the following situations:-

24 1. However, Preliminary test results may be released
25 to licensed physicians or the medical or nonmedical personnel
26 subject to the significant exposure for purposes of
27 subparagraphs (h)10., (i)10. and 11., and 12.

28 2. Preliminary test results may be released to health
29 care providers and to the person tested when decisions about
30 care or treatment of the person tested cannot await the
31 results of confirmatory testing. Positive preliminary HIV

1 test results shall not be characterized to the patient as a
2 diagnosis of HIV infection. Justification for the use of
3 preliminary test results must be documented in the medical
4 record by the health care provider who ordered the test. This
5 subparagraph does not authorize the release of preliminary
6 test results for the purpose of routine identification of
7 HIV-infected individuals or when HIV testing is incidental to
8 the preliminary diagnosis or care of a patient. Corroborating
9 or confirmatory testing must be conducted as followup to a
10 positive preliminary test. Results shall be communicated to
11 the patient according to statute regardless of the outcome.
12 Except as provided in this section, test results are
13 confidential and exempt from the provisions of s. 119.07(1).

14 ~~(e) Except as otherwise provided, no test result shall~~
15 ~~be revealed to the person upon whom the test was performed~~
16 ~~without affording that person the immediate opportunity for~~
17 ~~individual, face-to-face counseling about:~~

- 18 ~~1. The meaning of the test results;~~
- 19 ~~2. The possible need for additional testing;~~
- 20 ~~3. Measures for the prevention of the transmission of~~
21 ~~the human immunodeficiency virus infection;~~
- 22 ~~4. The availability in the geographic area of any~~
23 ~~appropriate health care services, including mental health~~
24 ~~care, and appropriate social and support services;~~
- 25 ~~5. The benefits of locating and counseling any~~
26 ~~individual by whom the infected individual may have been~~
27 ~~exposed to the human immunodeficiency virus infection and any~~
28 ~~individual whom the infected individual may have exposed to~~
29 ~~such human immunodeficiency virus infection; and~~

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1 ~~6. The availability, if any, of the services of public~~
2 ~~health authorities with respect to locating and counseling any~~
3 ~~individual described in subparagraph 5.~~

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5 ~~Telephonic posttest counseling shall be permitted when~~
6 ~~reporting the HIV test results of a home access HIV test that~~
7 ~~is approved by the United States Food and Drug Administration~~
8 ~~and analyzed by a laboratory certified under the federal~~
9 ~~Clinical Laboratory Improvement Amendments of 1988 or licensed~~
10 ~~under part I of chapter 483.~~

11 (e)~~(f)~~ Except as provided in this section, the
12 identity of any person upon whom a test has been performed and
13 test results are confidential and exempt from the provisions
14 of s. 119.07(1). No person who has obtained or has knowledge
15 of a test result pursuant to this section may disclose or be
16 compelled to disclose the identity of any person upon whom a
17 test is performed, or the results of such a test in a manner
18 which permits identification of the subject of the test,
19 except to the following persons:

20 1. The subject of the test or the subject's legally
21 authorized representative.

22 2. Any person, including third-party payors,
23 designated in a legally effective release of the test results
24 executed prior to or after the test by the subject of the test
25 or the subject's legally authorized representative. The test
26 subject may in writing authorize the disclosure of the test
27 subject's HIV test results to third party payors, who need not
28 be specifically identified, and to other persons to whom the
29 test subject subsequently issues a general release of medical
30 information. A general release without such prior written
31 authorization is not sufficient to release HIV test results.

1 3. An authorized agent or employee of a health
2 facility or health care provider if the health facility or
3 health care provider itself is authorized to obtain the test
4 results, the agent or employee participates in the
5 administration or provision of patient care or handles or
6 processes specimens of body fluids or tissues, and the agent
7 or employee has a need to know such information. The
8 department shall adopt a rule defining which persons have a
9 need to know pursuant to this subparagraph.

10 4. Health care providers consulting between themselves
11 or with health care facilities to determine diagnosis and
12 treatment. For purposes of this subparagraph, health care
13 providers shall include licensed health care professionals
14 employed by or associated with state, county, or municipal
15 detention facilities when such health care professionals are
16 acting exclusively for the purpose of providing diagnoses or
17 treatment of persons in the custody of such facilities.

18 5. The department, in accordance with rules for
19 reporting and controlling the spread of disease, as otherwise
20 provided by state law.

21 6. A health facility or health care provider which
22 procures, processes, distributes, or uses:

23 a. A human body part from a deceased person, with
24 respect to medical information regarding that person; or

25 b. Semen provided prior to July 6, 1988, for the
26 purpose of artificial insemination.

27 7. Health facility staff committees, for the purposes
28 of conducting program monitoring, program evaluation, or
29 service reviews pursuant to chapters 395 and 766.

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1 8. Authorized medical or epidemiological researchers
2 who may not further disclose any identifying characteristics
3 or information.

4 9. A person allowed access by a court order which is
5 issued in compliance with the following provisions:

6 a. No court of this state shall issue such order
7 unless the court finds that the person seeking the test
8 results has demonstrated a compelling need for the test
9 results which cannot be accommodated by other means. In
10 assessing compelling need, the court shall weigh the need for
11 disclosure against the privacy interest of the test subject
12 and the public interest which may be disserved by disclosure
13 which deters blood, organ, and semen donation and future human
14 immunodeficiency virus-related testing or which may lead to
15 discrimination. This paragraph shall not apply to blood bank
16 donor records.

17 b. Pleadings pertaining to disclosure of test results
18 shall substitute a pseudonym for the true name of the subject
19 of the test. The disclosure to the parties of the subject's
20 true name shall be communicated confidentially in documents
21 not filed with the court.

22 c. Before granting any such order, the court shall
23 provide the individual whose test result is in question with
24 notice and a reasonable opportunity to participate in the
25 proceedings if he or she is not already a party.

26 d. Court proceedings as to disclosure of test results
27 shall be conducted in camera, unless the subject of the test
28 agrees to a hearing in open court or unless the court
29 determines that a public hearing is necessary to the public
30 interest and the proper administration of justice.

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1 e. Upon the issuance of an order to disclose test
2 results, the court shall impose appropriate safeguards against
3 unauthorized disclosure which shall specify the persons who
4 may have access to the information, the purposes for which the
5 information shall be used, and appropriate prohibitions on
6 future disclosure.

7 10. A person allowed access by order of a judge of
8 compensation claims of the Division of Workers' Compensation
9 of the Department of Labor and Employment Security. A judge
10 of compensation claims shall not issue such order unless he or
11 she finds that the person seeking the test results has
12 demonstrated a compelling need for the test results which
13 cannot be accommodated by other means.

14 11. Those employees of the department or of
15 child-placing or child-caring agencies or of family foster
16 homes, licensed pursuant to s. 409.175, who are directly
17 involved in the placement, care, control, or custody of such
18 test subject and who have a need to know such information;
19 adoptive parents of such test subject; or any adult custodian,
20 any adult relative, or any person responsible for the child's
21 welfare, if the test subject was not tested under subparagraph
22 (b)2. and if a reasonable attempt has been made to locate and
23 inform the legal guardian of a test result. The department
24 shall adopt a rule to implement this subparagraph.

25 12. A health care provider involved in the delivery of
26 a child can note the mother's HIV test results in the child's
27 medical record.

28 13.12. Medical personnel or nonmedical personnel who
29 have been subject to a significant exposure during the course
30 of medical practice or in the performance of professional
31 duties, or individuals who are the subject of the significant

1 exposure as provided in subparagraphs (h)10., (i)10. and 11.,
2 and 12.

3 14. The medical examiner can disclose positive HIV
4 test results to the department in accordance with rules for
5 reporting and controlling the spread of disease.

6 (f)(g) Except as provided in this section, the
7 identity of a person upon whom a test has been performed is
8 confidential and exempt from the provisions of s. 119.07(1).
9 No person to whom the results of a test have been disclosed
10 may disclose the test results to another person except as
11 authorized by this subsection and by ss. 951.27 and 960.003.
12 Whenever disclosure is made pursuant to this subsection, it
13 shall be accompanied by a statement in writing which includes
14 the following or substantially similar language: "This
15 information has been disclosed to you from records whose
16 confidentiality is protected by state law. State law
17 prohibits you from making any further disclosure of such
18 information without the specific written consent of the person
19 to whom such information pertains, or as otherwise permitted
20 by state law. A general authorization for the release of
21 medical or other information is NOT sufficient for this
22 purpose." An oral disclosure shall be accompanied by oral
23 notice and followed by a written notice within 10 days, except
24 that this notice shall not be required for disclosures made
25 pursuant to subparagraphs (e)3., (f)3. and 4.

26 (g)(h) Human immunodeficiency virus test results
27 contained in the medical records of a hospital licensed under
28 chapter 395 may be released in accordance with s. 395.3025
29 without being subject to the requirements of subparagraph
30 (e)2., (f)2., subparagraph (e)9., (f)9., or paragraph (f)(g);
31 provided the hospital has obtained written informed consent

1 for the HIV test in accordance with provisions of this
2 section.

3 (h)~~(i)~~ Notwithstanding the provisions of paragraph
4 (a), informed consent is not required:

5 1. When testing for sexually transmissible diseases is
6 required by state or federal law, or by rule including the
7 following situations:

8 a. HIV testing pursuant to s. 796.08 of persons
9 convicted of prostitution or of procuring another to commit
10 prostitution.

11 b. Testing for HIV by a medical examiner in accordance
12 with s. 406.11.

13 2. Those exceptions provided for blood, plasma,
14 organs, skin, semen, or other human tissue pursuant to s.
15 381.0041.

16 3. For the performance of an HIV-related test by
17 licensed medical personnel in bona fide medical emergencies
18 when the test results are necessary for medical diagnostic
19 purposes to provide appropriate emergency care or treatment to
20 the person being tested and the patient is unable to consent,
21 as supported by documentation in the medical record.

22 Notification of test results in accordance with paragraph (c)
23 ~~Posttest counseling~~ is required.

24 4. For the performance of an HIV-related test by
25 licensed medical personnel for medical diagnosis of acute
26 illness where, in the opinion of the attending physician,
27 obtaining informed consent would be detrimental to the
28 patient, as supported by documentation in the medical record,
29 and the test results are necessary for medical diagnostic
30 purposes to provide appropriate care or treatment to the
31 person being tested. Notification of test results in

1 accordance with paragraph (c)~~Posttest counseling~~ is required
2 if it would not be detrimental to the patient. This
3 subparagraph does not authorize the routine testing of
4 patients for HIV infection without informed consent.

5 5. When HIV testing is performed as part of an autopsy
6 for which consent was obtained pursuant to s. 872.04.

7 6. For the performance of an HIV test upon a defendant
8 pursuant to the victim's request in a prosecution for any type
9 of sexual battery where a blood sample is taken from the
10 defendant voluntarily, pursuant to court order for any
11 purpose, or pursuant to the provisions of s. 775.0877, s.
12 951.27, or s. 960.003; however, the results of any HIV test
13 performed shall be disclosed solely to the victim and the
14 defendant, except as provided in ss. 775.0877, 951.27, and
15 960.003.

16 7. When an HIV test is mandated by court order.

17 8. For epidemiological research pursuant to s.
18 381.0032, for research consistent with institutional review
19 boards created by 45 C.F.R. part 46, or for the performance of
20 an HIV-related test for the purpose of research, if the
21 testing is performed in a manner by which the identity of the
22 test subject is not known and may not be retrieved by the
23 researcher.

24 9. When human tissue is collected lawfully without the
25 consent of the donor for corneal removal as authorized by s.
26 732.9185 or enucleation of the eyes as authorized by s.
27 732.919.

28 10. For the performance of an HIV test upon an
29 individual who comes into contact with medical personnel in
30 such a way that a significant exposure has occurred during the
31 course of employment or within the scope of practice and where

1 a blood sample is available that was taken from that
2 individual voluntarily by medical personnel for other
3 purposes. "Medical personnel" includes a licensed or
4 certified health care professional; an employee of a health
5 care professional, health care facility, or blood bank; and a
6 paramedic or emergency medical technician as defined in s.
7 401.23.

8 a. Prior to performance of an HIV test on a
9 voluntarily obtained blood sample, the individual from whom
10 the blood was obtained shall be requested to consent to the
11 performance of the test and to the release of the results.
12 The individual's refusal to consent and all information
13 concerning the performance of an HIV test and any HIV test
14 result shall be documented only in the medical personnel's
15 record unless the individual gives written consent to entering
16 this information on the individual's medical record.

17 b. Reasonable attempts to locate the individual and to
18 obtain consent shall be made and all attempts must be
19 documented. If the individual cannot be found, an HIV test may
20 be conducted on the available blood sample. If the individual
21 does not voluntarily consent to the performance of an HIV
22 test, the individual shall be informed that an HIV test will
23 be performed, and counseling shall be furnished as provided in
24 this section. However, HIV testing shall be conducted only
25 after a licensed physician documents, in the medical record of
26 the medical personnel, that there has been a significant
27 exposure and that, in the physician's medical judgment, the
28 information is medically necessary to determine the course of
29 treatment for the medical personnel.

30 c. Costs of any HIV test of a blood sample performed
31 with or without the consent of the individual, as provided in

1 this subparagraph, shall be borne by the medical personnel or
2 the employer of the medical personnel. However, costs of
3 testing or treatment not directly related to the initial HIV
4 tests or costs of subsequent testing or treatment shall not be
5 borne by the medical personnel or the employer of the medical
6 personnel.

7 d. In order to utilize the provisions of this
8 subparagraph, the medical personnel must either be tested for
9 HIV pursuant to this section or provide the results of an HIV
10 test taken within 6 months prior to the significant exposure
11 if such test results are negative.

12 e. A person who receives the results of an HIV test
13 pursuant to this subparagraph shall maintain the
14 confidentiality of the information received and of the persons
15 tested. Such confidential information is exempt from s.
16 119.07(1).

17 f. If the source of the exposure will not voluntarily
18 submit to HIV testing and a blood sample is not available, the
19 medical personnel or the employer of such person acting on
20 behalf of the employee may seek a court order directing the
21 source of the exposure to submit to HIV testing. A sworn
22 statement by a physician licensed under chapter 458 or chapter
23 459 that a significant exposure has occurred and that, in the
24 physician's medical judgment, testing is medically necessary
25 to determine the course of treatment constitutes probable
26 cause for the issuance of an order by the court. The results
27 of the test shall be released to the source of the exposure
28 and to the person who experienced the exposure.

29 11. For the performance of an HIV test upon an
30 individual who comes into contact with medical personnel in
31 such a way that a significant exposure has occurred during the

1 course of employment or within the scope of practice of the
2 medical personnel while the medical personnel provides
3 emergency medical treatment to the individual; or who comes
4 into contact with nonmedical personnel in such a way that a
5 significant exposure has occurred while the nonmedical
6 personnel provides emergency medical assistance during a
7 medical emergency. For the purposes of this subparagraph, a
8 medical emergency means an emergency medical condition outside
9 of a hospital or health care facility that provides physician
10 care. The test may be performed only during the course of
11 treatment for the medical emergency.

12 a. An individual who is capable of providing consent
13 shall be requested to consent to an HIV test prior to the
14 testing. The individual's refusal to consent, and all
15 information concerning the performance of an HIV test and its
16 result, shall be documented only in the medical personnel's
17 record unless the individual gives written consent to entering
18 this information on the individual's medical record.

19 b. HIV testing shall be conducted only after a
20 licensed physician documents, in the medical record of the
21 medical personnel or nonmedical personnel, that there has been
22 a significant exposure and that, in the physician's medical
23 judgment, the information is medically necessary to determine
24 the course of treatment for the medical personnel or
25 nonmedical personnel.

26 c. Costs of any HIV test performed with or without the
27 consent of the individual, as provided in this subparagraph,
28 shall be borne by the medical personnel or the employer of the
29 medical personnel or nonmedical personnel. However, costs of
30 testing or treatment not directly related to the initial HIV
31 tests or costs of subsequent testing or treatment shall not be

1 borne by the medical personnel or the employer of the medical
2 personnel or nonmedical personnel.

3 d. In order to utilize the provisions of this
4 subparagraph, the medical personnel or nonmedical personnel
5 shall be tested for HIV pursuant to this section or shall
6 provide the results of an HIV test taken within 6 months prior
7 to the significant exposure if such test results are negative.

8 e. A person who receives the results of an HIV test
9 pursuant to this subparagraph shall maintain the
10 confidentiality of the information received and of the persons
11 tested. Such confidential information is exempt from s.
12 119.07(1).

13 f. If the source of the exposure will not voluntarily
14 submit to HIV testing and a blood sample was not obtained
15 during treatment for the medical emergency, the medical
16 personnel, the employer of the medical personnel acting on
17 behalf of the employee, or the nonmedical personnel may seek a
18 court order directing the source of the exposure to submit to
19 HIV testing. A sworn statement by a physician licensed under
20 chapter 458 or chapter 459 that a significant exposure has
21 occurred and that, in the physician's medical judgment,
22 testing is medically necessary to determine the course of
23 treatment constitutes probable cause for the issuance of an
24 order by the court. The results of the test shall be released
25 to the source of the exposure and to the person who
26 experienced the exposure.

27 12. For the performance of an HIV test by the medical
28 examiner upon a deceased individual who is the source of a
29 significant exposure to medical personnel or nonmedical
30 personnel who provided emergency medical assistance and who
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1 expired or could not be resuscitated during treatment for the
2 medical emergency.

3 13.12. For the performance of an HIV-related test
4 medically indicated by licensed medical personnel for medical
5 diagnosis of a hospitalized infant as necessary to provide
6 appropriate care and treatment of the infant when, after a
7 reasonable attempt, a parent cannot be contacted to provide
8 consent. The medical records of the infant shall reflect the
9 reason consent of the parent was not initially obtained. Test
10 results ~~and posttest counseling~~ shall be provided to the
11 parent when the parent is located.

12 14. For the performance of HIV testing conducted to
13 monitor the clinical progress of a patient previously
14 diagnosed to be HIV positive.

15 15. For the performance of repeated HIV testing
16 conducted to monitor possible conversion from a significant
17 exposure.

18 (4) COUNTY HEALTH DEPARTMENT NETWORK OF VOLUNTARY
19 HUMAN IMMUNODEFICIENCY VIRUS TESTING PROGRAMS.--

20 (a) The Department of Health shall establish a network
21 of voluntary human immunodeficiency virus testing programs in
22 every county in the state. These programs shall be conducted
23 in each ~~county~~ health department established under the
24 provisions of part I of chapter 154. Additional programs may
25 be contracted to other private providers to the extent that
26 finances permit and local circumstances dictate.

27 (b) Each county health department shall have the
28 ability to provide counseling and testing for human
29 immunodeficiency virus to each patient who receives services
30 and shall offer such testing on a voluntary basis to each
31 patient who presents himself or herself for services in a

1 public health program designated by the State Health Officer
2 by rule.

3 (c) Each county health department shall provide a
4 program of counseling and testing for human immunodeficiency
5 virus infection, on both an anonymous and confidential basis.
6 Counseling provided to a patient tested on both an anonymous
7 and confidential basis shall include informing the patient of
8 the availability of partner-notification services, the
9 benefits of such services, and the confidentiality protections
10 available as part of such services. The Department of Health
11 or its designated agent shall continue to provide for
12 anonymous testing through an alternative testing site program
13 with sites throughout all areas of the state. Each county
14 health department shall maintain a list of anonymous testing
15 sites. The list shall include the locations, phone numbers,
16 and hours of operation of the sites and shall be disseminated
17 to all persons and programs offering human immunodeficiency
18 virus testing within the service area of the county health
19 department, including physicians licensed under chapter 458 or
20 chapter 459. Except as provided in this section, the identity
21 of a person upon whom a test has been performed and test
22 results are confidential and exempt from the provisions of s.
23 119.07(1).

24 (d) The result of a serologic test conducted under the
25 auspices of the Department of Health shall not be used to
26 determine if a person may be insured for disability, health,
27 or life insurance or to screen or determine suitability for,
28 or to discharge a person from, employment. Any person who
29 violates the provisions of this subsection is guilty of a
30 misdemeanor of the first degree, punishable as provided in s.
31 775.082 or s. 775.083.

1 (5) HUMAN IMMUNODEFICIENCY VIRUS TESTING REQUIREMENTS;
2 REGISTRATION WITH THE DEPARTMENT OF HEALTH; EXEMPTIONS FROM
3 REGISTRATION.--No county health department and no other person
4 in this state shall conduct or hold themselves out to the
5 public as conducting a testing program for acquired immune
6 deficiency syndrome, ~~acquired immune deficiency syndrome~~
7 ~~related complex~~, or human immunodeficiency virus status
8 without first registering with the Department of Health,
9 reregistering each year, complying with all other applicable
10 provisions of state law, and meeting the following
11 requirements:

12 (a) The program must be directed by a person with a
13 minimum number of contact hours of experience in the
14 counseling of persons with acquired immune deficiency
15 syndrome, ~~acquired immune deficiency syndrome related complex~~,
16 or human immunodeficiency virus infection, as established by
17 the Department of Health by rule.

18 (b) The program must have all medical care supervised
19 by a physician licensed under the provisions of chapter 458 or
20 chapter 459.

21 (c) The program shall have all laboratory procedures
22 performed in a laboratory licensed under the provisions of
23 chapter 483.

24 (d) The program must meet all the informed consent
25 criteria contained in subsection (3).

26 (e) The program must provide the opportunity for
27 pretest counseling on the meaning of a test for human
28 immunodeficiency virus, including medical indications for the
29 test; the possibility of false positive or false negative
30 results; the potential need for confirmatory testing; the
31 potential social, medical, and economic consequences of a

1 positive test result; and the need to eliminate high-risk
2 behavior.

3 (f) The program must provide supplemental
4 corroborative testing on all positive test results before the
5 results of any positive test are provided to the patient.
6 Except as provided in this section, the identity of any person
7 upon whom a test has been performed and test results are
8 confidential and exempt from the provisions of s. 119.07(1).

9 (g) The program must provide the opportunity for
10 face-to-face posttest counseling on the meaning of the test
11 results; the possible need for additional testing; the social,
12 medical, and economic consequences of a positive test result;
13 and the need to eliminate behavior which might spread the
14 disease to others.

15 (h) Each person providing posttest counseling to a
16 patient with a positive test result shall receive specialized
17 training, to be specified by rule of the department, about the
18 special needs of persons with positive results, including
19 recognition of possible suicidal behavior, and shall refer the
20 patient for further health and social services as appropriate.

21 (i) When services are provided for a charge during
22 pretest counseling, testing, supplemental testing, and
23 posttest counseling, the program must provide a complete list
24 of all such charges to the patient and the Department of
25 Health.

26 (j) Nothing in this subsection shall be construed to
27 require a facility licensed under chapter 483 or a person
28 licensed under the provisions of chapter 457, chapter 458,
29 chapter 459, chapter 460, chapter 461, chapter 466, or chapter
30 467 to register with the Department of Health if he or she
31 does not advertise or hold himself or herself out to the

1 public as conducting testing programs for human
2 immunodeficiency virus infection or specializing in such
3 testing.

4 (k) The department may make inspections and
5 investigations, by any of its duly authorized officers or
6 employees, to respond to complaints or to determine compliance
7 with this section.

8 (l) The department shall deny, suspend, or revoke the
9 registration of any person or agency that violates this
10 section, or any rule adopted under this section, constituting
11 an emergency affecting the immediate health, safety, and
12 welfare of a person receiving service.

13 (6) PENALTIES.--

14 (a) Any violation of this section by a facility or
15 licensed health care provider shall be a ground for
16 disciplinary action contained in the facility's or
17 professional's respective licensing chapter.

18 (b) Any person who violates the confidentiality
19 provisions of this section and s. 951.27 commits a misdemeanor
20 of the first degree, punishable as provided in s. 775.082 or
21 s. 775.083.

22 (8) MODEL PROTOCOL FOR COUNSELING AND TESTING FOR
23 HUMAN IMMUNODEFICIENCY VIRUS.--The Department of Health shall
24 develop a model protocol consistent with the provisions of
25 this section for counseling and testing persons for the human
26 immunodeficiency virus. The protocol shall include criteria
27 for evaluating a patient's risk for human immunodeficiency
28 virus infection and for offering human immunodeficiency virus
29 testing, on a voluntary basis, as a routine part of primary
30 health care or admission to a health care facility. The
31 Department of Health shall ensure that the protocols developed

1 under this section are made available to health care
2 providers.

3 Section 3. Section 384.25, Florida Statutes, is
4 amended to read:

5 384.25 Reporting required.--

6 (1) Each person who makes a diagnosis of or treats a
7 person with a sexually transmissible disease and each
8 laboratory that performs a test for a sexually transmissible
9 disease which concludes with a positive result shall report
10 such facts as may be required by the department by rule,
11 within a time period as specified by rule of the department,
12 but in no case to exceed 2 weeks.

13 (2) The department shall adopt rules specifying the
14 information required in and a minimum time period for
15 reporting a sexually transmissible disease. In adopting such
16 rules, the department shall consider the need for information,
17 protections for the privacy and confidentiality of the
18 patient, and the practical ability of persons and laboratories
19 to report in a reasonable fashion. To ensure the
20 confidentiality of persons infected with the human
21 immunodeficiency virus (HIV), reporting of HIV infection and
22 acquired immune deficiency syndrome (AIDS) must be conducted
23 using the HIV/AIDS Reporting System (HARS) developed by the
24 Centers for Disease Control and Prevention of the United
25 States Public Health Service.

26 (3) The department shall require reporting of
27 physician diagnosed cases of AIDS based upon diagnostic
28 criteria from the Centers for Disease Control and Prevention.

29 (4) The department may require physician and
30 laboratory reporting of HIV infection. However, only reports
31 of HIV infection identified on or after the effective date of

1 the rule developed by the department pursuant to this
2 subsection shall be accepted. The reporting may not affect or
3 relate to anonymous HIV testing programs conducted pursuant to
4 s. 381.004(4) or to university-based medical research
5 protocols as determined by the department.

6 ~~(5) After notification of the test subject under~~
7 ~~subsection (4), the department may, with the consent of the~~
8 ~~test subject, notify school superintendents of students and~~
9 ~~school personnel whose HIV tests are positive.~~

10 (5)~~(6)~~ The department shall by February 1 of each year
11 submit to the Legislature an annual report relating to all
12 information obtained pursuant to this section.

13 ~~(7) The rules adopted by the department pursuant to~~
14 ~~this section shall specify the protocols for the reporting~~
15 ~~required or permitted by subsection (3) or subsection (4).~~
16 ~~The protocol developed for implementation of subsection (4)~~
17 ~~shall include, but need not be limited to, information to be~~
18 ~~given to a test subject during pretest counseling, including:~~

19 ~~(a) The fact that a positive HIV test result may be~~
20 ~~reported to the county health department with sufficient~~
21 ~~information to identify the test subject and the availability~~
22 ~~and location of anonymous testing sites; and~~

23 ~~(b) The partner notification services available~~
24 ~~through the county health departments, the benefits of such~~
25 ~~services, and the confidentiality protections available as~~
26 ~~part of such services.~~

27 (6)~~(8)~~ Each person who violates the provisions of this
28 section or the rules adopted hereunder may be fined by the
29 department up to \$500 for each offense. The department shall
30 report each violation of this section to the regulatory agency

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1 responsible for licensing each health care professional and
2 each laboratory to which these provisions apply.

3 Section 4. Subsection (1) of section 455.2226, Florida
4 Statutes, is amended to read:

5 455.2226 Funeral directors and embalmers; instruction
6 on human immunodeficiency virus and acquired immune deficiency
7 syndrome.--

8 (1) The Board of Funeral Directors and Embalmers shall
9 require each person licensed or certified under chapter 470 to
10 complete a continuing educational course, approved by the
11 board, on human immunodeficiency virus and acquired immune
12 deficiency syndrome as part of biennial relicensure or
13 recertification. The course shall consist of education on the
14 modes of transmission, infection control procedures, clinical
15 management, and prevention of human immunodeficiency virus and
16 acquired immune deficiency syndrome. Such course shall include
17 information on current Florida law on acquired immune
18 deficiency syndrome, and its impact on testing,
19 confidentiality of test results, and treatment of patients,
20 and any protocols and procedures applicable to human
21 immunodeficiency counseling and testing, reporting, and
22 partner notification issued under ss. 381.004 and 384.25.

23 Section 5. This act shall take effect July 1, 1998.
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SENATE SUMMARY

Requires information on protocols and procedures for HIV testing and counseling to be included in educational courses on HIV and acquired immune deficiency syndrome. Allows the disclosure of preliminary HIV test results in specified circumstances. Provides circumstances under which medical examiners may disclose test results and when a mother's test results may be made part of her baby's medical record. Provides for court orders to force a person who is the source of a significant exposure for an emergency worker to undergo testing. Providing for inspections and investigations by the Department of Health and for the department to deny, revoke, or suspend registrations. Provides requirements for protocols.

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