

Bill No. CS for CS for SB 714

Amendment No. ____

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11	Senator Myers moved the following amendment:		
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13	Senate Amendment (with title amendment)		
14	On page 5, line 31,		
15			
16	insert:		
17	Section 1. Subsection (1) of section 381.0035, Florida		
18	Statutes, is amended to read:		
19	381.0035 Educational course on human immunodeficiency		
20	virus and acquired immune deficiency syndrome; employees and		
21	clients of certain health care facilities.--		
22	(1) The Department of Health shall require all		
23	employees and clients of facilities licensed under chapters		
24	393, 394, and 397 and employees of facilities licensed under		
25	chapter 395 and parts II, III, IV, and VI of chapter 400 to		
26	complete, biennially, a continuing educational course on the		
27	modes of transmission, infection control procedures, clinical		
28	management, and prevention of human immunodeficiency virus and		
29	acquired immune deficiency syndrome with an emphasis on		
30	appropriate behavior and attitude change. Such instruction		
31	shall include information on current Florida law and its		

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1 impact on testing, confidentiality of test results, and
 2 treatment of patients and any protocols and procedures
 3 applicable to human immunodeficiency counseling and testing,
 4 reporting, the offering of HIV testing to pregnant women, and
 5 partner notification issues pursuant to ss. 381.004 and
 6 384.25.

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

10 381.004 Testing for human immunodeficiency virus.--

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

12 (a) "HIV test" means a test ordered after July 6,
 13 1988, to determine the presence of the antibody or antigen to
 14 human immunodeficiency virus or the presence of human
 15 immunodeficiency virus infection.

16 (b) "HIV test result" means a laboratory report of a
 17 human immunodeficiency virus test result entered into a
 18 medical record on or after July 6, 1988, or any report or
 19 notation in a medical record of a laboratory report of a human
 20 immunodeficiency virus test. As used in this section, the
 21 term "HIV test result" does not include test results reported
 22 to a health care provider by a patient.

23 (c) "Significant exposure" means:

- 24 1. Exposure to blood or body fluids through
- 25 needlestick, instruments, or sharps;
- 26 2. Exposure of mucous membranes to visible blood or
- 27 body fluids, to which universal precautions apply according to
- 28 the National Centers for Disease Control and Prevention,
- 29 including, without limitations, the following body fluids:
- 30 a. Blood.
- 31 b. Semen.

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- 1 c. Vaginal secretions.
- 2 d. Cerebro-spinal fluid (CSF).
- 3 e. Synovial fluid.
- 4 f. Pleural fluid.
- 5 g. Peritoneal fluid.
- 6 h. Pericardial fluid.
- 7 i. Amniotic fluid.
- 8 j. Laboratory specimens that contain HIV (e.g.,
- 9 suspensions of concentrated virus); or
- 10 3. Exposure of skin to visible blood or body fluids,
- 11 especially when the exposed skin is chapped, abraded, or
- 12 afflicted with dermatitis or the contact is prolonged or
- 13 involving an extensive area.
- 14 (d) "Preliminary HIV test" means an antibody screening
- 15 test, such as the enzyme-linked immunosorbent assays (ELISAs)
- 16 or the Single-Use Diagnostic System (SUDS).
- 17 (e)(d) "Test subject" or "subject of the test" means
- 18 the person upon whom an HIV test is performed, or the person
- 19 who has legal authority to make health care decisions for the
- 20 test subject.
- 21 (3) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED
- 22 CONSENT; RESULTS; COUNSELING; CONFIDENTIALITY.--
- 23 (a) No person in this state shall order ~~perform~~ a test
- 24 designed to identify the human immunodeficiency virus, or its
- 25 antigen or antibody, without first obtaining the informed
- 26 consent of the person upon whom the test is being performed,
- 27 except as specified in paragraph (i). Informed consent shall
- 28 be preceded by an explanation of the right to confidential
- 29 treatment of information identifying the subject of the test
- 30 and the results of the test to the extent provided by law.
- 31 Information shall also be provided on the fact that a positive

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1 HIV test result will be reported to the county health
 2 department with sufficient information to identify the test
 3 subject and on the availability and location of sites at which
 4 anonymous testing is performed. As required in paragraph
 5 (4)(c), each county health department shall maintain a list of
 6 sites at which anonymous testing is performed, including the
 7 locations, phone numbers, and hours of operation of the sites.
 8 Consent need not be in writing provided there is documentation
 9 in the medical record that the test has been explained and the
 10 consent has been obtained.

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

- 14 1. Is not competent, is incapacitated, or is otherwise
 15 unable to make an informed judgment; or
- 16 2. Has not reached the age of majority, except as
 17 provided in s. 384.30.

18 (c) The person ordering the test or that person's
 19 designee shall ensure that all reasonable efforts are made to
 20 notify the test subject of his or her test result.

21 Notification of a person with a positive test result shall
 22 include information on the availability of appropriate medical
 23 and support services, on the importance of notifying partners
 24 who may have been exposed, and on preventing transmission of
 25 HIV. Notification of a person with a negative test result
 26 shall include, as appropriate, information on preventing the
 27 transmission of HIV. When testing occurs in a hospital
 28 emergency department, detention facility, or other facility
 29 and the test subject has been released before being notified
 30 of positive test results, informing the county health
 31 department for that department to notify the test subject

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1 fulfills this responsibility.~~No person shall order a test~~
2 ~~without making available to the person tested, prior to the~~
3 ~~test, information regarding measures for the prevention of,~~
4 ~~exposure to, and transmission of human immunodeficiency virus.~~
5 ~~At the time an HIV test is ordered, the person ordering the~~
6 ~~test shall schedule a return visit with the test subject for~~
7 ~~the purpose of disclosing the test results and conducting~~
8 ~~posttest counseling as described in paragraph (e).~~

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

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

17 2. Preliminary test results may be released to health
18 care providers and to the person tested when decisions about
19 medical care or treatment of the person tested cannot await
20 the results of confirmatory testing. Positive preliminary HIV
21 test results shall not be characterized to the patient as a
22 diagnosis of HIV infection. Justification for the use of
23 preliminary test results must be documented in the medical
24 record by the health care provider who ordered the test. This
25 subparagraph does not authorize the release of preliminary
26 test results for the purpose of routine identification of
27 HIV-infected individuals or when HIV testing is incidental to
28 the preliminary diagnosis or care of a patient. Corroborating
29 or confirmatory testing must be conducted as followup to a
30 positive preliminary test. Results shall be communicated to
31 the patient according to statute regardless of the outcome.

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1 Except as provided in this section, test results are
2 confidential and exempt from the provisions of s. 119.07(1).

3 ~~(e) Except as otherwise provided, no test result shall~~
4 ~~be revealed to the person upon whom the test was performed~~
5 ~~without affording that person the immediate opportunity for~~
6 ~~individual, face-to-face counseling about:~~
7 ~~1. The meaning of the test results;~~
8 ~~2. The possible need for additional testing;~~
9 ~~3. Measures for the prevention of the transmission of~~
10 ~~the human immunodeficiency virus infection;~~
11 ~~4. The availability in the geographic area of any~~
12 ~~appropriate health care services, including mental health~~
13 ~~care, and appropriate social and support services;~~
14 ~~5. The benefits of locating and counseling any~~
15 ~~individual by whom the infected individual may have been~~
16 ~~exposed to the human immunodeficiency virus infection and any~~
17 ~~individual whom the infected individual may have exposed to~~
18 ~~such human immunodeficiency virus infection; and~~
19 ~~6. The availability, if any, of the services of public~~
20 ~~health authorities with respect to locating and counseling any~~
21 ~~individual described in subparagraph 5.~~

22
23 ~~Telephonic posttest counseling shall be permitted when~~
24 ~~reporting the HIV test results of a home access HIV test that~~
25 ~~is approved by the United States Food and Drug Administration~~
26 ~~and analyzed by a laboratory certified under the federal~~
27 ~~Clinical Laboratory Improvement Amendments of 1988 or licensed~~
28 ~~under part I of chapter 483.~~

29 ~~(e)(f)~~ Except as provided in this section, the
30 identity of any person upon whom a test has been performed and
31 test results are confidential and exempt from the provisions

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1 of s. 119.07(1). No person who has obtained or has knowledge
2 of a test result pursuant to this section may disclose or be
3 compelled to disclose the identity of any person upon whom a
4 test is performed, or the results of such a test in a manner
5 which permits identification of the subject of the test,
6 except to the following persons:

7 1. The subject of the test or the subject's legally
8 authorized representative.

9 2. Any person, including third-party payors,
10 designated in a legally effective release of the test results
11 executed prior to or after the test by the subject of the test
12 or the subject's legally authorized representative. The test
13 subject may in writing authorize the disclosure of the test
14 subject's HIV test results to third party payors, who need not
15 be specifically identified, and to other persons to whom the
16 test subject subsequently issues a general release of medical
17 information. A general release without such prior written
18 authorization is not sufficient to release HIV test results.

19 3. An authorized agent or employee of a health
20 facility or health care provider if the health facility or
21 health care provider itself is authorized to obtain the test
22 results, the agent or employee participates in the
23 administration or provision of patient care or handles or
24 processes specimens of body fluids or tissues, and the agent
25 or employee has a need to know such information. The
26 department shall adopt a rule defining which persons have a
27 need to know pursuant to this subparagraph.

28 4. Health care providers consulting between themselves
29 or with health care facilities to determine diagnosis and
30 treatment. For purposes of this subparagraph, health care
31 providers shall include licensed health care professionals

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1 employed by or associated with state, county, or municipal
2 detention facilities when such health care professionals are
3 acting exclusively for the purpose of providing diagnoses or
4 treatment of persons in the custody of such facilities.

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

8 6. A health facility or health care provider which
9 procures, processes, distributes, or uses:

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

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

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

17 8. Authorized medical or epidemiological researchers
18 who may not further disclose any identifying characteristics
19 or information.

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

22 a. No court of this state shall issue such order
23 unless the court finds that the person seeking the test
24 results has demonstrated a compelling need for the test
25 results which cannot be accommodated by other means. In
26 assessing compelling need, the court shall weigh the need for
27 disclosure against the privacy interest of the test subject
28 and the public interest which may be disserved by disclosure
29 which deters blood, organ, and semen donation and future human
30 immunodeficiency virus-related testing or which may lead to
31 discrimination. This paragraph shall not apply to blood bank

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1 donor records.

2 b. Pleadings pertaining to disclosure of test results
3 shall substitute a pseudonym for the true name of the subject
4 of the test. The disclosure to the parties of the subject's
5 true name shall be communicated confidentially in documents
6 not filed with the court.

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

11 d. Court proceedings as to disclosure of test results
12 shall be conducted in camera, unless the subject of the test
13 agrees to a hearing in open court or unless the court
14 determines that a public hearing is necessary to the public
15 interest and the proper administration of justice.

16 e. Upon the issuance of an order to disclose test
17 results, the court shall impose appropriate safeguards against
18 unauthorized disclosure which shall specify the persons who
19 may have access to the information, the purposes for which the
20 information shall be used, and appropriate prohibitions on
21 future disclosure.

22 10. A person allowed access by order of a judge of
23 compensation claims of the Division of Workers' Compensation
24 of the Department of Labor and Employment Security. A judge
25 of compensation claims shall not issue such order unless he or
26 she finds that the person seeking the test results has
27 demonstrated a compelling need for the test results which
28 cannot be accommodated by other means.

29 11. Those employees of the department or of
30 child-placing or child-caring agencies or of family foster
31 homes, licensed pursuant to s. 409.175, who are directly

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1 involved in the placement, care, control, or custody of such
2 test subject and who have a need to know such information;
3 adoptive parents of such test subject; or any adult custodian,
4 any adult relative, or any person responsible for the child's
5 welfare, if the test subject was not tested under subparagraph
6 (b)2. and if a reasonable attempt has been made to locate and
7 inform the legal guardian of a test result. The department
8 shall adopt a rule to implement this subparagraph.

9 12. Those employees of residential facilities or of
10 community-based care programs that care for developmentally
11 disabled persons, pursuant to chapter 393, who are directly
12 involved in the care, control, or custody of such test subject
13 and who have a need to know such information.

14 13. A health care provider involved in the delivery of
15 a child can note the mother's HIV test results in the child's
16 medical record.

17 14.12. Medical personnel or nonmedical personnel who
18 have been subject to a significant exposure during the course
19 of medical practice or in the performance of professional
20 duties, or individuals who are the subject of the significant
21 exposure as provided in subparagraphs (h)10., (i)10. and 11.,
22 and 13.

23 15. The medical examiner shall disclose positive HIV
24 test results to the department in accordance with rules for
25 reporting and controlling the spread of disease.

26 (f)(g) Except as provided in this section, the
27 identity of a person upon whom a test has been performed is
28 confidential and exempt from the provisions of s. 119.07(1).
29 No person to whom the results of a test have been disclosed
30 may disclose the test results to another person except as
31 authorized by this subsection and by ss. 951.27 and 960.003.

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1 Whenever disclosure is made pursuant to this subsection, it
2 shall be accompanied by a statement in writing which includes
3 the following or substantially similar language: "This
4 information has been disclosed to you from records whose
5 confidentiality is protected by state law. State law
6 prohibits you from making any further disclosure of such
7 information without the specific written consent of the person
8 to whom such information pertains, or as otherwise permitted
9 by state law. A general authorization for the release of
10 medical or other information is NOT sufficient for this
11 purpose." An oral disclosure shall be accompanied by oral
12 notice and followed by a written notice within 10 days, except
13 that this notice shall not be required for disclosures made
14 pursuant to subparagraphs (e)3.~~(f)3.~~ and 4.

15 (g)~~(h)~~ Human immunodeficiency virus test results
16 contained in the medical records of a hospital licensed under
17 chapter 395 may be released in accordance with s. 395.3025
18 without being subject to the requirements of subparagraph
19 (e)2.~~(f)2.~~, subparagraph (e)9.~~(f)9.~~, or paragraph (f)~~(g)~~;
20 provided the hospital has obtained written informed consent
21 for the HIV test in accordance with provisions of this
22 section.

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

25 1. When testing for sexually transmissible diseases is
26 required by state or federal law, or by rule including the
27 following situations:

28 a. HIV testing pursuant to s. 796.08 of persons
29 convicted of prostitution or of procuring another to commit
30 prostitution.

31 b. Testing for HIV by a medical examiner in accordance

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1 with s. 406.11.

2 2. Those exceptions provided for blood, plasma,
3 organs, skin, semen, or other human tissue pursuant to s.
4 381.0041.

5 3. For the performance of an HIV-related test by
6 licensed medical personnel in bona fide medical emergencies
7 when the test results are necessary for medical diagnostic
8 purposes to provide appropriate emergency care or treatment to
9 the person being tested and the patient is unable to consent,
10 as supported by documentation in the medical record.

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

13 4. For the performance of an HIV-related test by
14 licensed medical personnel for medical diagnosis of acute
15 illness where, in the opinion of the attending physician,
16 obtaining informed consent would be detrimental to the
17 patient, as supported by documentation in the medical record,
18 and the test results are necessary for medical diagnostic
19 purposes to provide appropriate care or treatment to the
20 person being tested. Notification of test results in
21 accordance with paragraph (c) ~~Posttest counseling~~ is required
22 if it would not be detrimental to the patient. This
23 subparagraph does not authorize the routine testing of
24 patients for HIV infection without informed consent.

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

27 6. For the performance of an HIV test upon a defendant
28 pursuant to the victim's request in a prosecution for any type
29 of sexual battery where a blood sample is taken from the
30 defendant voluntarily, pursuant to court order for any
31 purpose, or pursuant to the provisions of s. 775.0877, s.

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1 951.27, or s. 960.003; however, the results of any HIV test
2 performed shall be disclosed solely to the victim and the
3 defendant, except as provided in ss. 775.0877, 951.27, and
4 960.003.

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

6 8. For epidemiological research pursuant to s.
7 381.0032, for research consistent with institutional review
8 boards created by 45 C.F.R. part 46, or for the performance of
9 an HIV-related test for the purpose of research, if the
10 testing is performed in a manner by which the identity of the
11 test subject is not known and may not be retrieved by the
12 researcher.

13 9. When human tissue is collected lawfully without the
14 consent of the donor for corneal removal as authorized by s.
15 732.9185 or enucleation of the eyes as authorized by s.
16 732.919.

17 10. For the performance of an HIV test upon an
18 individual who comes into contact with medical personnel in
19 such a way that a significant exposure has occurred during the
20 course of employment or within the scope of practice and where
21 a blood sample is available that was taken from that
22 individual voluntarily by medical personnel for other
23 purposes. "Medical personnel" includes a licensed or
24 certified health care professional; an employee of a health
25 care professional, health care facility, or blood bank; and a
26 paramedic or emergency medical technician as defined in s.
27 401.23.

28 a. Prior to performance of an HIV test on a
29 voluntarily obtained blood sample, the individual from whom
30 the blood was obtained shall be requested to consent to the
31 performance of the test and to the release of the results.

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1 The individual's refusal to consent and all information
2 concerning the performance of an HIV test and any HIV test
3 result shall be documented only in the medical personnel's
4 record unless the individual gives written consent to entering
5 this information on the individual's medical record.

6 b. Reasonable attempts to locate the individual and to
7 obtain consent shall be made and all attempts must be
8 documented. If the individual cannot be found, an HIV test may
9 be conducted on the available blood sample. If the individual
10 does not voluntarily consent to the performance of an HIV
11 test, the individual shall be informed that an HIV test will
12 be performed, and counseling shall be furnished as provided in
13 this section. However, HIV testing shall be conducted only
14 after a licensed physician documents, in the medical record of
15 the medical personnel, that there has been a significant
16 exposure and that, in the physician's medical judgment, the
17 information is medically necessary to determine the course of
18 treatment for the medical personnel.

19 c. Costs of any HIV test of a blood sample performed
20 with or without the consent of the individual, as provided in
21 this subparagraph, shall be borne by the medical personnel or
22 the employer of the medical personnel. However, costs of
23 testing or treatment not directly related to the initial HIV
24 tests or costs of subsequent testing or treatment shall not be
25 borne by the medical personnel or the employer of the medical
26 personnel.

27 d. In order to utilize the provisions of this
28 subparagraph, the medical personnel must either be tested for
29 HIV pursuant to this section or provide the results of an HIV
30 test taken within 6 months prior to the significant exposure
31 if such test results are negative.

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1 e. A person who receives the results of an HIV test
2 pursuant to this subparagraph shall maintain the
3 confidentiality of the information received and of the persons
4 tested. Such confidential information is exempt from s.
5 119.07(1).

6 f. If the source of the exposure will not voluntarily
7 submit to HIV testing and a blood sample is not available, the
8 medical personnel or the employer of such person acting on
9 behalf of the employee may seek a court order directing the
10 source of the exposure to submit to HIV testing. A sworn
11 statement by a physician licensed under chapter 458 or chapter
12 459 that a significant exposure has occurred and that, in the
13 physician's medical judgment, testing is medically necessary
14 to determine the course of treatment constitutes probable
15 cause for the issuance of an order by the court. The results
16 of the test shall be released to the source of the exposure
17 and to the person who experienced the exposure.

18 11. For the performance of an HIV test upon an
19 individual who comes into contact with medical personnel in
20 such a way that a significant exposure has occurred during the
21 course of employment or within the scope of practice of the
22 medical personnel while the medical personnel provides
23 emergency medical treatment to the individual; or who comes
24 into contact with nonmedical personnel in such a way that a
25 significant exposure has occurred while the nonmedical
26 personnel provides emergency medical assistance during a
27 medical emergency. For the purposes of this subparagraph, a
28 medical emergency means an emergency medical condition outside
29 of a hospital or health care facility that provides physician
30 care. The test may be performed only during the course of
31 treatment for the medical emergency.

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1 a. An individual who is capable of providing consent
2 shall be requested to consent to an HIV test prior to the
3 testing. The individual's refusal to consent, and all
4 information concerning the performance of an HIV test and its
5 result, shall be documented only in the medical personnel's
6 record unless the individual gives written consent to entering
7 this information on the individual's medical record.

8 b. HIV testing shall be conducted only after a
9 licensed physician documents, in the medical record of the
10 medical personnel or nonmedical personnel, that there has been
11 a significant exposure and that, in the physician's medical
12 judgment, the information is medically necessary to determine
13 the course of treatment for the medical personnel or
14 nonmedical personnel.

15 c. Costs of any HIV test performed with or without the
16 consent of the individual, as provided in this subparagraph,
17 shall be borne by the medical personnel or the employer of the
18 medical personnel or nonmedical personnel. However, costs of
19 testing or treatment not directly related to the initial HIV
20 tests or costs of subsequent testing or treatment shall not be
21 borne by the medical personnel or the employer of the medical
22 personnel or nonmedical personnel.

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

28 e. A person who receives the results of an HIV test
29 pursuant to this subparagraph shall maintain the
30 confidentiality of the information received and of the persons
31 tested. Such confidential information is exempt from s.

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1 119.07(1).

2 f. If the source of the exposure will not voluntarily
3 submit to HIV testing and a blood sample was not obtained
4 during treatment for the medical emergency, the medical
5 personnel, the employer of the medical personnel acting on
6 behalf of the employee, or the nonmedical personnel may seek a
7 court order directing the source of the exposure to submit to
8 HIV testing. A sworn statement by a physician licensed under
9 chapter 458 or chapter 459 that a significant exposure has
10 occurred and that, in the physician's medical judgment,
11 testing is medically necessary to determine the course of
12 treatment constitutes probable cause for the issuance of an
13 order by the court. The results of the test shall be released
14 to the source of the exposure and to the person who
15 experienced the exposure.

16 12. For the performance of an HIV test by the medical
17 examiner upon a deceased individual who is the source of a
18 significant exposure to medical personnel or nonmedical
19 personnel who provided emergency medical assistance and who
20 expired or could not be resuscitated during treatment for the
21 medical emergency.

22 13.12. For the performance of an HIV-related test
23 medically indicated by licensed medical personnel for medical
24 diagnosis of a hospitalized infant as necessary to provide
25 appropriate care and treatment of the infant when, after a
26 reasonable attempt, a parent cannot be contacted to provide
27 consent. The medical records of the infant shall reflect the
28 reason consent of the parent was not initially obtained. Test
29 results and posttest counseling shall be provided to the
30 parent when the parent is located.

31 14. For the performance of HIV testing conducted to

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1 monitor the clinical progress of a patient previously
2 diagnosed to be HIV positive.

3 15. For the performance of repeated HIV testing
4 conducted to monitor possible conversion from a significant
5 exposure.

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

8 (a) The Department of Health shall establish a network
9 of voluntary human immunodeficiency virus testing programs in
10 every county in the state. These programs shall be conducted
11 in each ~~county~~ health department established under the
12 provisions of part I of chapter 154. Additional programs may
13 be contracted to other private providers to the extent that
14 finances permit and local circumstances dictate.

15 (b) Each county health department shall have the
16 ability to provide counseling and testing for human
17 immunodeficiency virus to each patient who receives services
18 and shall offer such testing on a voluntary basis to each
19 patient who presents himself or herself for services in a
20 public health program designated by the State Health Officer
21 by rule.

22 (c) Each county health department shall provide a
23 program of counseling and testing for human immunodeficiency
24 virus infection, on both an anonymous and confidential basis.
25 Counseling provided to a patient tested on both an anonymous
26 and confidential basis shall include informing the patient of
27 the availability of partner-notification services, the
28 benefits of such services, and the confidentiality protections
29 available as part of such services. The Department of Health
30 or its designated agent shall continue to provide for
31 anonymous testing through an alternative testing site program

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1 with sites throughout all areas of the state. Each county
2 health department shall maintain a list of anonymous testing
3 sites. The list shall include the locations, phone numbers,
4 and hours of operation of the sites and shall be disseminated
5 to all persons and programs offering human immunodeficiency
6 virus testing within the service area of the county health
7 department, including physicians licensed under chapter 458 or
8 chapter 459. Except as provided in this section, the identity
9 of a person upon whom a test has been performed and test
10 results are confidential and exempt from the provisions of s.
11 119.07(1).

12 (d) The result of a serologic test conducted under the
13 auspices of the Department of Health shall not be used to
14 determine if a person may be insured for disability, health,
15 or life insurance or to screen or determine suitability for,
16 or to discharge a person from, employment. Any person who
17 violates the provisions of this subsection is guilty of a
18 misdemeanor of the first degree, punishable as provided in s.
19 775.082 or s. 775.083.

20 (5) HUMAN IMMUNODEFICIENCY VIRUS TESTING REQUIREMENTS;
21 REGISTRATION WITH THE DEPARTMENT OF HEALTH; EXEMPTIONS FROM
22 REGISTRATION.--No county health department and no other person
23 in this state shall conduct or hold themselves out to the
24 public as conducting a testing program for acquired immune
25 deficiency syndrome, ~~acquired immune deficiency syndrome~~
26 ~~related complex~~, or human immunodeficiency virus status
27 without first registering with the Department of Health,
28 reregistering each year, complying with all other applicable
29 provisions of state law, and meeting the following
30 requirements:

31 (a) The program must be directed by a person with a

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1 minimum number of contact hours of experience in the
2 counseling of persons with acquired immune deficiency
3 syndrome, ~~acquired immune deficiency syndrome related complex,~~
4 or human immunodeficiency virus infection, as established by
5 the Department of Health by rule.

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

9 (c) The program shall have all laboratory procedures
10 performed in a laboratory licensed under the provisions of
11 chapter 483.

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

14 (e) The program must provide the opportunity for
15 pretest counseling on the meaning of a test for human
16 immunodeficiency virus, including medical indications for the
17 test; the possibility of false positive or false negative
18 results; the potential need for confirmatory testing; the
19 potential social, medical, and economic consequences of a
20 positive test result; and the need to eliminate high-risk
21 behavior.

22 (f) The program must provide supplemental
23 corroborative testing on all positive test results before the
24 results of any positive test are provided to the patient.
25 Except as provided in this section, the identity of any person
26 upon whom a test has been performed and test results are
27 confidential and exempt from the provisions of s. 119.07(1).

28 (g) The program must provide the opportunity for
29 face-to-face posttest counseling on the meaning of the test
30 results; the possible need for additional testing; the social,
31 medical, and economic consequences of a positive test result;

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1 and the need to eliminate behavior which might spread the
2 disease to others.

3 (h) Each person providing posttest counseling to a
4 patient with a positive test result shall receive specialized
5 training, to be specified by rule of the department, about the
6 special needs of persons with positive results, including
7 recognition of possible suicidal behavior, and shall refer the
8 patient for further health and social services as appropriate.

9 (i) When services are provided for a charge during
10 pretest counseling, testing, supplemental testing, and
11 posttest counseling, the program must provide a complete list
12 of all such charges to the patient and the Department of
13 Health.

14 (j) Nothing in this subsection shall be construed to
15 require a facility licensed under chapter 483 or a person
16 licensed under the provisions of chapter 457, chapter 458,
17 chapter 459, chapter 460, chapter 461, chapter 466, or chapter
18 467 to register with the Department of Health if he or she
19 does not advertise or hold himself or herself out to the
20 public as conducting testing programs for human
21 immunodeficiency virus infection or specializing in such
22 testing.

23 (k) The department shall deny, suspend, or revoke the
24 registration of any person or agency that violates this
25 section, or any rule adopted under this section, constituting
26 an emergency affecting the immediate health, safety, and
27 welfare of a person receiving service.

28 (6) PENALTIES.--

29 (a) Any violation of this section by a facility or
30 licensed health care provider shall be a ground for
31 disciplinary action contained in the facility's or

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1 professional's respective licensing chapter.

2 (b) Any person who violates the confidentiality
3 provisions of this section and s. 951.27 commits a misdemeanor
4 of the first degree, punishable as provided in s. 775.082 or
5 s. 775.083.

6 (8) MODEL PROTOCOL FOR COUNSELING AND TESTING FOR
7 HUMAN IMMUNODEFICIENCY VIRUS.--The Department of Health shall
8 develop, by rule, a model protocol consistent with the
9 provisions of this section for counseling and testing persons
10 for the human immunodeficiency virus. The protocol shall
11 include criteria for evaluating a patient's risk for human
12 immunodeficiency virus infection and for offering human
13 immunodeficiency virus testing, on a voluntary basis, as a
14 routine part of primary health care or admission to a health
15 care facility. The Department of Health shall ensure that the
16 protocols developed under this section are made available to
17 health care providers.

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

20 384.25 Reporting required.--

21 (1) Each person who makes a diagnosis of or treats a
22 person with a sexually transmissible disease and each
23 laboratory that performs a test for a sexually transmissible
24 disease which concludes with a positive result shall report
25 such facts as may be required by the department by rule,
26 within a time period as specified by rule of the department,
27 but in no case to exceed 2 weeks.

28 (2) The department shall adopt rules specifying the
29 information required in and a minimum time period for
30 reporting a sexually transmissible disease. In adopting such
31 rules, the department shall consider the need for information,

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1 protections for the privacy and confidentiality of the
2 patient, and the practical ability of persons and laboratories
3 to report in a reasonable fashion. To ensure the
4 confidentiality of persons infected with the human
5 immunodeficiency virus (HIV), reporting of HIV infection and
6 acquired immune deficiency syndrome (AIDS) must be conducted
7 using the HIV/AIDS Reporting System (HARS) developed by the
8 Centers for Disease Control and Prevention of the United
9 States Public Health Service.

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

13 (4) The department may require physician and
14 laboratory reporting of HIV infection. However, only reports
15 of HIV infection identified on or after the effective date of
16 the rule developed by the department pursuant to this
17 subsection shall be accepted. The reporting may not affect or
18 relate to anonymous HIV testing programs conducted pursuant to
19 s. 381.004(4) or to university-based medical research
20 protocols as determined by the department.

21 (5) After notification of the test subject under
22 subsection (4), the department may, with the consent of the
23 test subject, notify school superintendents of students and
24 school personnel whose HIV tests are positive.

25 (6) The department shall by February 1 of each year
26 submit to the Legislature an annual report relating to all
27 information obtained pursuant to this section.

28 ~~(7) The rules adopted by the department pursuant to~~
29 ~~this section shall specify the protocols for the reporting~~
30 ~~required or permitted by subsection (3) or subsection (4).~~
31 ~~The protocol developed for implementation of subsection (4)~~

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1 ~~shall include, but need not be limited to, information to be~~
2 ~~given to a test subject during pretest counseling, including:~~

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

7 ~~(b) The partner notification services available~~
8 ~~through the county health departments, the benefits of such~~
9 ~~services, and the confidentiality protections available as~~
10 ~~part of such services.~~

11 ~~(7)(8)~~ Each person who violates the provisions of this
12 section or the rules adopted hereunder may be fined by the
13 department up to \$500 for each offense. The department shall
14 report each violation of this section to the regulatory agency
15 responsible for licensing each health care professional and
16 each laboratory to which these provisions apply.

17 Section 4. Subsection (1) of section 455.604, Florida
18 Statutes, is amended to read:

19 455.604 Requirement for instruction for certain
20 licensees on human immunodeficiency virus and acquired immune
21 deficiency syndrome.--

22 (1) The appropriate board shall require each person
23 licensed or certified under chapter 457; chapter 458; chapter
24 459; chapter 460; chapter 461; chapter 463; chapter 464;
25 chapter 465; chapter 466; part II, part III, or part V of
26 chapter 468; or chapter 486 to complete a continuing
27 educational course, approved by the board, on human
28 immunodeficiency virus and acquired immune deficiency syndrome
29 as part of biennial relicensure or recertification. The course
30 shall consist of education on the modes of transmission,
31 infection control procedures, clinical management, and

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1 prevention of human immunodeficiency virus and acquired immune
 2 deficiency syndrome. Such course shall include information on
 3 current Florida law on acquired immune deficiency syndrome and
 4 its impact on testing, confidentiality of test results, ~~and~~
 5 treatment of patients, and any protocols and procedures
 6 applicable to human immunodeficiency virus counseling and
 7 testing, reporting, the offering of HIV testing to pregnant
 8 women, and partner notification issues pursuant to ss. 381.004
 9 and 384.25.

10

11 (Redesignate subsequent sections.)

12

13

14 ===== T I T L E A M E N D M E N T =====

15 And the title is amended as follows:

16 On page 1, line 2, delete that line

17

18 and insert:

19 An act relating to health care; amending s.
 20 381.0035, F.S.; requiring certain information
 21 related to HIV testing and counseling to be
 22 included in HIV educational courses; amending
 23 s. 381.004, F.S.; requiring informed consent
 24 before an HIV test may be ordered; requiring
 25 certain information to be provided when
 26 informed consent is sought; providing
 27 requirements with respect to notification and
 28 release of test results; authorizing certain
 29 disclosures of test results; providing for
 30 court orders for testing in specified
 31 circumstances; providing for emergency action

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1 against a registration; providing requirements
2 for model protocols; providing penalties;
3 amending s. 384.25, F.S.; deleting provisions
4 relating to protocols and to notification to
5 school superintendents; amending s. 455.604,
6 F.S.; requiring certain information related to
7 HIV testing to be included in HIV educational
8 courses for certain licensed professions;
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