

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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1 Representative(s) [Gannon](#) offered the following:

2
3 **Amendment (with title amendment)**

4 Remove line(s) 72-363 and insert:

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

7 3. For the performance of an HIV-related test by licensed
8 medical personnel in bona fide medical emergencies when the test
9 results are necessary for medical diagnostic purposes to provide
10 appropriate emergency care or treatment to the person being
11 tested and the patient is unable to consent, as supported by
12 documentation in the medical record. Notification of test
13 results in accordance with paragraph (c) is required.

14 4. For the performance of an HIV-related test by licensed
15 medical personnel for medical diagnosis of acute illness where,

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16 in the opinion of the attending physician, obtaining informed
17 consent would be detrimental to the patient, as supported by
18 documentation in the medical record, and the test results are
19 necessary for medical diagnostic purposes to provide appropriate
20 care or treatment to the person being tested. Notification of
21 test results in accordance with paragraph (c) is required if it
22 would not be detrimental to the patient. This subparagraph does
23 not authorize the routine testing of patients for HIV infection
24 without informed consent.

25 5. When HIV testing is performed as part of an autopsy for
26 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 purpose,
31 or pursuant to the provisions of s. 775.0877, s. 951.27, or s.
32 960.003; however, the results of any HIV test performed shall be
33 disclosed solely to the victim and the defendant, except as
34 provided in ss. 775.0877, 951.27, and 960.003.

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

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

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42 9. When human tissue is collected lawfully without the
43 consent of the donor for corneal removal as authorized by s.
44 765.5185 or enucleation of the eyes as authorized by s. 765.519.

45 10. For the performance of an HIV test upon an individual
46 who comes into contact with medical personnel in such a way that
47 a significant exposure has occurred during the course of
48 employment or within the scope of practice and where a blood
49 sample is available that was taken from that individual
50 voluntarily by medical personnel for other purposes. The term
51 "medical personnel" includes a licensed or certified health care
52 professional; an employee of a health care professional or
53 health care facility; employees of a laboratory licensed under
54 chapter 483; personnel of a blood bank or plasma center; a
55 medical student or other student who is receiving training as a
56 health care professional at a health care facility; and a
57 paramedic or emergency medical technician certified by the
58 department to perform life-support procedures under s. 401.23.

59 a. Prior to performance of an HIV test on a voluntarily
60 obtained blood sample, the individual from whom the blood was
61 obtained shall be requested to consent to the performance of the
62 test and to the release of the results. The individual's refusal
63 to consent and all information concerning the performance of an
64 HIV test and any HIV test result shall be documented only in the
65 medical personnel's record unless the individual gives written
66 consent to entering this information on the individual's medical
67 record.

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68 b. Reasonable attempts to locate the individual and to
69 obtain consent shall be made, and all attempts must be
70 documented. If the individual cannot be found, an HIV test may
71 be conducted on the available blood sample. If the individual
72 does not voluntarily consent to the performance of an HIV test,
73 the individual shall be informed that an HIV test will be
74 performed, and counseling shall be furnished as provided in this
75 section. However, HIV testing shall be conducted only after a
76 licensed physician documents, in the medical record of the
77 medical personnel, that there has been a significant exposure
78 and that, in the physician's medical judgment, the information
79 is medically necessary to determine the course of treatment for
80 the medical personnel.

81 c. Costs of any HIV test of a blood sample performed with
82 or without the consent of the individual, as provided in this
83 subparagraph, shall be borne by the medical personnel or the
84 employer of the medical personnel. However, costs of testing or
85 treatment not directly related to the initial HIV tests or costs
86 of subsequent testing or treatment shall not be borne by the
87 medical personnel or the employer of the medical personnel.

88 d. In order to utilize the provisions of this
89 subparagraph, the medical personnel must either be tested for
90 HIV pursuant to this section or provide the results of an HIV
91 test taken within 6 months prior to the significant exposure if
92 such test results are negative.

93 e. A person who receives the results of an HIV test
94 pursuant to this subparagraph shall maintain the confidentiality

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95 of the information received and of the persons tested. Such
96 confidential information is exempt from s. 119.07(1).

97 f. If the source of the exposure will not voluntarily
98 submit to HIV testing and a blood sample is not available, the
99 medical personnel or the employer of such person acting on
100 behalf of the employee may seek a court order directing the
101 source of the exposure to submit to HIV testing. A sworn
102 statement by a physician licensed under chapter 458 or chapter
103 459 that a significant exposure has occurred and that, in the
104 physician's medical judgment, testing is medically necessary to
105 determine the course of treatment constitutes probable cause for
106 the issuance of an order by the court. The results of the test
107 shall be released to the source of the exposure and to the
108 person who experienced the exposure.

109 11. For the performance of an HIV test upon an individual
110 who comes into contact with medical personnel in such a way that
111 a significant exposure has occurred during the course of
112 employment or within the scope of practice of the medical
113 personnel while the medical personnel provides emergency medical
114 treatment to the individual; or who comes into contact with
115 nonmedical personnel in such a way that a significant exposure
116 has occurred while the nonmedical personnel provides emergency
117 medical assistance during a medical emergency. For the purposes
118 of this subparagraph, a medical emergency means an emergency
119 medical condition outside of a hospital or health care facility
120 that provides physician care. The test may be performed only
121 during the course of treatment for the medical emergency.

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122 a. An individual who is capable of providing consent shall
123 be requested to consent to an HIV test prior to the testing. The
124 individual's refusal to consent, and all information concerning
125 the performance of an HIV test and its result, shall be
126 documented only in the medical personnel's record unless the
127 individual gives written consent to entering this information on
128 the individual's medical record.

129 b. HIV testing shall be conducted only after a licensed
130 physician documents, in the medical record of the medical
131 personnel or nonmedical personnel, that there has been a
132 significant exposure and that, in the physician's medical
133 judgment, the information is medically necessary to determine
134 the course of treatment for the medical personnel or nonmedical
135 personnel.

136 c. Costs of any HIV test performed with or without the
137 consent of the individual, as provided in this subparagraph,
138 shall be borne by the medical personnel or the employer of the
139 medical personnel or nonmedical personnel. However, costs of
140 testing or treatment not directly related to the initial HIV
141 tests or costs of subsequent testing or treatment shall not be
142 borne by the medical personnel or the employer of the medical
143 personnel or nonmedical personnel.

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

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

153 f. If the source of the exposure will not voluntarily
154 submit to HIV testing and a blood sample was not obtained during
155 treatment for the medical emergency, the medical personnel, the
156 employer of the medical personnel acting on behalf of the
157 employee, or the nonmedical personnel may seek a court order
158 directing the source of the exposure to submit to HIV testing. A
159 sworn statement by a physician licensed under chapter 458 or
160 chapter 459 that a significant exposure has occurred and that,
161 in the physician's medical judgment, testing is medically
162 necessary to determine the course of treatment constitutes
163 probable cause for the issuance of an order by the court. The
164 results of the test shall be released to the source of the
165 exposure and to the person who experienced the exposure.

166 12. For the performance of an HIV test by the medical
167 examiner or attending physician upon an individual who expired
168 or could not be resuscitated while receiving emergency medical
169 assistance or care and who was the source of a significant
170 exposure to medical or nonmedical personnel providing such
171 assistance or care.

172 a. HIV testing may be conducted only after a licensed
173 physician documents in the medical record of the medical
174 personnel or nonmedical personnel that there has been a
175 significant exposure and that, in the physician's medical

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176 judgment, the information is medically necessary to determine
177 the course of treatment for the medical personnel or nonmedical
178 personnel.

179 b. Costs of any HIV test performed under this subparagraph
180 may not be charged to the deceased or to the family of the
181 deceased person.

182 c. For the provisions of this subparagraph to be
183 applicable, the medical personnel or nonmedical personnel must
184 be tested for HIV under this section or must provide the results
185 of an HIV test taken within 6 months before the significant
186 exposure if such test results are negative.

187 d. A person who receives the results of an HIV test
188 pursuant to this subparagraph shall comply with paragraph (e).

189 13. For the performance of an HIV-related test medically
190 indicated by licensed medical personnel for medical diagnosis of
191 a hospitalized infant as necessary to provide appropriate care
192 and treatment of the infant when, after a reasonable attempt, a
193 parent cannot be contacted to provide consent. The medical
194 records of the infant shall reflect the reason consent of the
195 parent was not initially obtained. Test results shall be
196 provided to the parent when the parent is located.

197 14. For the performance of HIV testing conducted to
198 monitor the clinical progress of a patient previously diagnosed
199 to be HIV positive.

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

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202 Section 2. Section 384.25, Florida Statutes, is amended to
203 read:

204 384.25 Reporting required.--

205 (1) Each person who makes a diagnosis of or treats a
206 person with a sexually transmissible disease and each laboratory
207 that performs a test ~~for a sexually transmissible disease~~ which
208 either concludes with a positive result for a sexually
209 transmissible disease or a result indicative of human
210 immunodeficiency virus (HIV) or acquired immune deficiency
211 syndrome (AIDS) shall report such facts as may be required by
212 the department by rule, within a time period as specified by
213 rule of the department, but in no case to exceed 2 weeks.

214 (2) The department shall adopt rules specifying the
215 information required ~~in~~ and the maximum a minimum time period
216 for reporting a sexually transmissible disease. In adopting such
217 rules, the department shall consider the need for information,
218 protections for the privacy and confidentiality of the patient,
219 and the practical ability of persons and laboratories to report
220 in a reasonable fashion.

221 (3) To ensure the confidentiality of persons infected with
222 the human immunodeficiency virus (HIV), reporting of HIV
223 infection and AIDS ~~acquired immune deficiency syndrome (AIDS)~~
224 must be conducted using a system ~~the HIV/AIDS Reporting System~~
225 ~~(HARS)~~ developed by the Centers for Disease Control and
226 Prevention of the United States Public Health Service or an
227 equivalent system.

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228 (a) The department shall adopt rules requiring each
229 physician and laboratory to report any newborn or infant up to
230 18 months of age who has been exposed to HIV. Such rules may
231 include the method and time period for reporting which may not
232 exceed 2 weeks, information to be included in the report,
233 enforcement requirements, and followup activities by the
234 department.

235 ~~(3) The department shall require reporting of physician~~
236 ~~diagnosed cases of AIDS based upon diagnostic criteria from the~~
237 ~~Centers for Disease Control and Prevention.~~

238 ~~(b)(4) The department may require physician and laboratory~~
239 ~~reporting of HIV infection. However, only reports of HIV~~
240 ~~infection identified on or after the effective date of the rule~~
241 ~~developed by the department pursuant to this subsection shall be~~
242 ~~accepted. The reporting may not affect or relate to anonymous~~
243 ~~HIV testing programs conducted pursuant to s. 381.004(4) or to~~
244 ~~university-based medical research protocols as determined by the~~
245 ~~department.~~

246 ~~(c)(5) After notification of the test subject under~~
247 ~~subsection (4), the department may, with the consent of the test~~
248 ~~subject, notify school superintendents of students and school~~
249 ~~personnel whose HIV tests are positive.~~

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

253 ~~(4)(7) Each person who violates the provisions of this~~
254 ~~section or the rules adopted hereunder may be fined by the~~

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255 department up to \$500 for each offense. The department shall
256 report each violation of this section to the regulatory agency
257 responsible for licensing each health care professional and each
258 laboratory to which these provisions apply.

259 Section 3. Section 384.31, Florida Statutes, is amended to
260 read:

261 384.31 Serological testing of pregnant women; duty of the
262 attendant.--

263 (1) Every person, including every physician licensed under
264 chapter 458 or chapter 459 or midwife licensed under part I of
265 chapter 464 or chapter 467, attending a pregnant woman for
266 conditions relating to pregnancy during the period of gestation
267 and delivery shall ~~take or~~ cause the woman to be tested for
268 sexually transmissible diseases, including HIV, as taken a
269 ~~sample of venous blood at a time or times specified by the~~
270 department rule. Testing ~~Each sample of blood~~ shall be conducted
271 ~~tested~~ by a laboratory approved for such purposes under part I
272 of chapter 483 ~~for sexually transmissible diseases as required~~
273 ~~by rule of the department.~~

274 (2) At the time the venous blood sample is taken, testing
275 for human immunodeficiency virus (HIV) infection shall be
276 offered to each pregnant woman. The prevailing professional
277 standard of care in this state requires each health care
278 provider and midwife who attends a pregnant woman to counsel the
279 woman to be tested for human immunodeficiency virus (HIV).
280 Counseling shall include a discussion of the availability of
281 treatment if the pregnant woman tests HIV positive. If a

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282 pregnant woman objects to HIV testing, reasonable steps shall be
283 taken to obtain a written statement of such objection, signed by
284 the patient, which shall be placed in the patient's medical
285 record. Every person, including every physician licensed under
286 chapter 458 or chapter 459 or midwife licensed under part I of
287 chapter 464 or chapter 467, who attends a pregnant woman who has
288 been offered and objects to HIV testing shall be immune from
289 liability arising out of or related to the contracting of HIV
290 infection or acquired immune deficiency syndrome (AIDS) by the
291 child from the mother.

292

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

294 Remove line(s) 5-20 and insert:

295 amending s. 384.25, F.S.; requiring certain positive test
296 results to be reported to the Department of Health within
297 a specified period of time; revising provisions relating
298 to method of reporting of test results, time period during
299 which the reports must be made, content of reports,
300 enforcement requirements, and followup activities and
301 requiring the department to adopt rules therefor; deleting
302 requirement that the department submit certain reports;
303 amending s. 384.31, F.S.; requiring testing of pregnant
304 women for sexually transmissible diseases; providing an
305 effective date.

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