

Bill No. SB 1648



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CHAMBER ACTION

<u>Senate</u>	.	<u>House</u>
Comm: RCS	.	
4/1/2008	.	
	.	
	.	

1 The Committee on Health Regulation (Jones) recommended the  
 2 following **amendment**:

3  
 4 **Senate Amendment**

5 Delete everything after the enacting clause  
 6 and insert:

7  
 8 Section 1. Paragraph (h) of subsection (3) of section  
 9 381.004, Florida Statutes, is amended to read:

10 381.004 HIV testing.--

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

13 (h) Notwithstanding the provisions of paragraph (a),  
 14 informed consent is not required:

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15           1. When testing for sexually transmissible diseases is  
16 required by state or federal law, or by rule including the  
17 following situations:

18           a. HIV testing pursuant to s. 796.08 of persons convicted  
19 of prostitution or of procuring another to commit prostitution.

20           b. HIV testing of inmates pursuant to s. 945.355 prior to  
21 their release from prison by reason of parole, accumulation of  
22 gain-time credits, or expiration of sentence.

23           c. Testing for HIV by a medical examiner in accordance  
24 with s. 406.11.

25           d. HIV testing of pregnant women pursuant to s. 384.31.

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

28           3. For the performance of an HIV-related test by licensed  
29 medical personnel in bona fide medical emergencies when the test  
30 results are necessary for medical diagnostic purposes to provide  
31 appropriate emergency care or treatment to the person being  
32 tested and the patient is unable to consent, as supported by  
33 documentation in the medical record. Notification of test  
34 results in accordance with paragraph (c) is required.

35           4. For the performance of an HIV-related test by licensed  
36 medical personnel for medical diagnosis of acute illness where,  
37 in the opinion of the attending physician, obtaining informed  
38 consent would be detrimental to the patient, as supported by  
39 documentation in the medical record, and the test results are  
40 necessary for medical diagnostic purposes to provide appropriate  
41 care or treatment to the person being tested. Notification of  
42 test results in accordance with paragraph (c) is required if it



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43 would not be detrimental to the patient. This subparagraph does  
44 not authorize the routine testing of patients for HIV infection  
45 without informed consent.

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

48 6. For the performance of an HIV test upon a defendant  
49 pursuant to the victim's request in a prosecution for any type  
50 of sexual battery where a blood sample is taken from the  
51 defendant voluntarily, pursuant to court order for any purpose,  
52 or pursuant to the provisions of s. 775.0877, s. 951.27, or s.  
53 960.003; however, the results of any HIV test performed shall be  
54 disclosed solely to the victim and the defendant, except as  
55 provided in ss. 775.0877, 951.27, and 960.003.

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

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

63 9. When human tissue is collected lawfully without the  
64 consent of the donor for corneal removal as authorized by s.  
65 765.5185 or enucleation of the eyes as authorized by s. 765.519.

66 10. For the performance of an HIV test upon an individual  
67 who comes into contact with medical personnel in such a way that  
68 a significant exposure has occurred during the course of  
69 employment or within the scope of practice and where a blood  
70 sample is available that was taken from that individual



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71 voluntarily by medical personnel for other purposes. The term  
72 "medical personnel" includes a licensed or certified health care  
73 professional; an employee of a health care professional or  
74 health care facility; employees of a laboratory licensed under  
75 chapter 483; personnel of a blood bank or plasma center; a  
76 medical student or other student who is receiving training as a  
77 health care professional at a health care facility; and a  
78 paramedic or emergency medical technician certified by the  
79 department to perform life-support procedures under s. 401.23.

80 a. Prior to performance of an HIV test on a voluntarily  
81 obtained blood sample, the individual from whom the blood was  
82 obtained shall be requested to consent to the performance of the  
83 test and to the release of the results. If consent cannot be  
84 obtained within the time necessary to perform the HIV test and  
85 begin prophylactic treatment of the exposed medical personnel,  
86 ~~The individual's refusal to consent and~~ all information  
87 concerning the performance of an HIV test and any HIV test  
88 result shall be documented only in the medical personnel's  
89 record unless the individual gives written consent to entering  
90 this information on the individual's medical record.

91 b. Reasonable attempts to locate the individual and to  
92 obtain consent shall be made, and all attempts must be  
93 documented. If the individual cannot be found or is unavailable,  
94 an HIV test may be conducted on the available blood sample. If  
95 the individual does not voluntarily consent to the performance  
96 of an HIV test, the individual shall be informed that an HIV  
97 test will be performed, and counseling shall be furnished as  
98 provided in this section. However, HIV testing shall be



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99 conducted only after appropriate medical personnel under the  
100 supervision of a licensed physician documents, in the medical  
101 record of the medical personnel, that there has been a  
102 significant exposure and that, in accordance with the written  
103 protocols based on the National Centers for Disease Control and  
104 Prevention guidelines on HIV postexposure prophylaxis and in the  
105 physician's medical judgment, the information is medically  
106 necessary to determine the course of treatment for the medical  
107 personnel.

108 c. Costs of any HIV test of a blood sample performed with  
109 or without the consent of the individual, as provided in this  
110 subparagraph, shall be borne by the medical personnel or the  
111 employer of the medical personnel. However, costs of testing or  
112 treatment not directly related to the initial HIV tests or costs  
113 of subsequent testing or treatment may not be borne by the  
114 medical personnel or the employer of the medical personnel.

115 d. In order to utilize the provisions of this  
116 subparagraph, the medical personnel must either be tested for  
117 HIV pursuant to this section or provide the results of an HIV  
118 test taken within 6 months prior to the significant exposure if  
119 such test results are negative.

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

124 f. If the source of the exposure will not voluntarily  
125 submit to HIV testing and a blood sample is not available, the  
126 medical personnel or the employer of such person acting on

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127 | behalf of the employee may seek a court order directing the  
128 | source of the exposure to submit to HIV testing. A sworn  
129 | statement by a physician licensed under chapter 458 or chapter  
130 | 459 that a significant exposure has occurred and that, in the  
131 | physician's medical judgment, testing is medically necessary to  
132 | determine the course of treatment constitutes probable cause for  
133 | the issuance of an order by the court. The results of the test  
134 | shall be released to the source of the exposure and to the  
135 | person who experienced the exposure.

136 |       11. For the performance of an HIV test upon an individual  
137 | who comes into contact with medical personnel in such a way that  
138 | a significant exposure has occurred during the course of  
139 | employment or within the scope of practice of the medical  
140 | personnel while the medical personnel provides emergency medical  
141 | treatment to the individual; or notwithstanding s. 384.287, an  
142 | individual who comes into contact with nonmedical personnel in  
143 | such a way that a significant exposure has occurred while the  
144 | nonmedical personnel provides emergency medical assistance  
145 | during a medical emergency. For the purposes of this  
146 | subparagraph, a medical emergency means an emergency medical  
147 | condition outside of a hospital or health care facility that  
148 | provides physician care. The test may be performed only during  
149 | the course of treatment for the medical emergency.

150 |       a. An individual who is capable of providing consent shall  
151 | be requested to consent to an HIV test prior to the testing. If  
152 | consent cannot be obtained within the time necessary to perform  
153 | the HIV test and begin prophylactic treatment of the exposed  
154 | medical personnel and nonmedical personnel, ~~The individual's~~

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155 ~~refusal to consent,~~ and all information concerning the  
156 performance of an HIV test and its result, shall be documented  
157 only in the medical personnel's or nonmedical personnel's record  
158 unless the individual gives written consent to entering this  
159 information on the individual's medical record.

160       b. HIV testing shall be conducted only after appropriate  
161 medical personnel under the supervision of a licensed physician  
162 documents, in the medical record of the medical personnel or  
163 nonmedical personnel, that there has been a significant exposure  
164 and that, in accordance with the written protocols based on the  
165 National Centers for Disease Control and Prevention guidelines  
166 on HIV postexposure prophylaxis and on the physician's medical  
167 judgment, the information is medically necessary to determine  
168 the course of treatment for the medical personnel or nonmedical  
169 personnel.

170       c. Costs of any HIV test performed with or without the  
171 consent of the individual, as provided in this subparagraph,  
172 shall be borne by the medical personnel or the employer of the  
173 medical personnel or nonmedical personnel. However, costs of  
174 testing or treatment not directly related to the initial HIV  
175 tests or costs of subsequent testing or treatment may not be  
176 borne by the medical personnel or the employer of the medical  
177 personnel or nonmedical personnel.

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



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

187 f. If the source of the exposure will not voluntarily  
188 submit to HIV testing and a blood sample was not obtained during  
189 treatment for the medical emergency, the medical personnel, the  
190 employer of the medical personnel acting on behalf of the  
191 employee, or the nonmedical personnel may seek a court order  
192 directing the source of the exposure to submit to HIV testing. A  
193 sworn statement by a physician licensed under chapter 458 or  
194 chapter 459 that a significant exposure has occurred and that,  
195 in the physician's medical judgment, testing is medically  
196 necessary to determine the course of treatment constitutes  
197 probable cause for the issuance of an order by the court. The  
198 results of the test shall be released to the source of the  
199 exposure and to the person who experienced the exposure.

200 12. For the performance of an HIV test by the medical  
201 examiner or attending physician upon an individual who expired  
202 or could not be resuscitated while receiving emergency medical  
203 assistance or care and who was the source of a significant  
204 exposure to medical or nonmedical personnel providing such  
205 assistance or care.

206 a. HIV testing may be conducted only after appropriate  
207 medical personnel under the supervision of a licensed physician  
208 documents in the medical record of the medical personnel or  
209 nonmedical personnel that there has been a significant exposure  
210 and that, in accordance with the written protocols based on the



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211 National Centers for Disease Control and Prevention guidelines  
212 on HIV post-exposure prophylaxis and on the physician's medical  
213 judgment, the information is medically necessary to determine  
214 the course of treatment for the medical personnel or nonmedical  
215 personnel.

216 b. Costs of any HIV test performed under this subparagraph  
217 may not be charged to the deceased or to the family of the  
218 deceased person.

219 c. For the provisions of this subparagraph to be  
220 applicable, the medical personnel or nonmedical personnel must  
221 be tested for HIV under this section or must provide the results  
222 of an HIV test taken within 6 months before the significant  
223 exposure if such test results are negative.

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

226 13. For the performance of an HIV-related test medically  
227 indicated by licensed medical personnel for medical diagnosis of  
228 a hospitalized infant as necessary to provide appropriate care  
229 and treatment of the infant when, after a reasonable attempt, a  
230 parent cannot be contacted to provide consent. The medical  
231 records of the infant shall reflect the reason consent of the  
232 parent was not initially obtained. Test results shall be  
233 provided to the parent when the parent is located.

234 14. For the performance of HIV testing conducted to  
235 monitor the clinical progress of a patient previously diagnosed  
236 to be HIV positive.

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

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Section 2. This act shall take effect July 1, 2008.