

By Senator Thompson

12-01300A-14

20141470\_\_

1                   A bill to be entitled  
2           An act relating to HIV testing; amending s. 381.004,  
3           F.S.; revising and adding definitions; differentiating  
4           between the notification and consent procedures for  
5           performing an HIV test in a health care setting and a  
6           nonhealth care setting; deleting the exemption from  
7           the requirement to obtain informed consent before  
8           testing a pregnant woman; amending s. 456.032, F.S.;  
9           conforming a cross-reference; providing an effective  
10          date.

11  
12 Be It Enacted by the Legislature of the State of Florida:

13  
14           Section 1. Subsection (1), paragraphs (a), (b), (g), and  
15           (h) of subsection (2), and paragraph (d) of subsection (4) of  
16           section 381.004, Florida Statutes, are amended, and subsection  
17           (1) of that section is reordered, to read:

18           381.004 HIV testing.—

19           (1) DEFINITIONS.—As used in this section:

20           (a) "Health care setting" means a setting devoted to both  
21 the diagnosis and care of persons, such as county health  
22 department clinics, hospital emergency departments, urgent care  
23 clinics, substance abuse treatment clinics, primary care  
24 settings, community clinics, mobile medical clinics, and  
25 correctional health care facilities.

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

12-01300A-14

20141470\_\_

30        (c) ~~(b)~~ "HIV test result" means a laboratory report of a  
31 human immunodeficiency virus test result entered into a medical  
32 record on or after July 6, 1988, or any report or notation in a  
33 medical record of a laboratory report of a human  
34 immunodeficiency virus test. ~~As used in this section,~~ The term  
35 "~~HIV test result~~" does not include test results reported to a  
36 health care provider by a patient.

37        (d) "Nonhealth care setting" means a site that conducts HIV  
38 testing for the sole purpose of identifying HIV infection. Such  
39 setting does not provide medical treatment but may include  
40 community-based organizations, outreach settings, county health  
41 department HIV testing programs, and mobile vans.

42        (f) ~~(e)~~ "Significant exposure" means:

- 43        1. Exposure to blood or body fluids through needlestick,  
44 instruments, or sharps;
- 45        2. Exposure of mucous membranes to visible blood or body  
46 fluids, to which universal precautions apply according to the  
47 National Centers for Disease Control and Prevention, including,  
48 without limitations, the following body fluids:
- 49        a. Blood.
  - 50        b. Semen.
  - 51        c. Vaginal secretions.
  - 52        d. Cerebrospinal ~~Cerebro-spinal~~ fluid (CSF).
  - 53        e. Synovial fluid.
  - 54        f. Pleural fluid.
  - 55        g. Peritoneal fluid.
  - 56        h. Pericardial fluid.
  - 57        i. Amniotic fluid.
  - 58        j. Laboratory specimens that contain HIV (e.g., suspensions

12-01300A-14

20141470\_\_

59 of concentrated virus); or

60 3. Exposure of skin to visible blood or body fluids,  
61 especially when the exposed skin is chapped, abraded, or  
62 afflicted with dermatitis or the contact is prolonged or  
63 involving an extensive area.

64 (e)~~(d)~~ "Preliminary HIV test" means an antibody or  
65 antibody-antigen screening test, such as the ~~enzyme-linked~~  
66 immunosorbent assays (IA), or a rapid test approved by the  
67 federal Food and Drug Administration ~~(ELISAs) or the Single-Use~~  
68 ~~Diagnostic System (SUDS).~~

69 (g)~~(e)~~ "Test subject" or "subject of the test" means the  
70 person upon whom an HIV test is performed, or the person who has  
71 legal authority to make health care decisions for the test  
72 subject.

73 (2) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED CONSENT;  
74 RESULTS; COUNSELING; CONFIDENTIALITY.—

75 (a) Before performing an HIV test:

76 1. In a health care setting, the health care provider shall  
77 notify the person to be tested that the test is planned, provide  
78 information about the test, and advise the person that he or she  
79 has the right to decline the test. The health care provider  
80 shall also explain the right to confidential treatment of  
81 information identifying the subject of the test and the results  
82 of the test as provided by law. If a person declines the test,  
83 the health care provider shall note that fact in the person's  
84 medical record. No person in this state shall order a test  
85 designed to identify the human immunodeficiency virus, or its  
86 antigen or antibody, without first obtaining the informed  
87 consent of the person upon whom the test is being performed,

12-01300A-14

20141470\_\_

88 ~~except as specified in paragraph (h). Informed consent shall be~~  
89 ~~preceded by an explanation of the right to confidential~~  
90 ~~treatment of information identifying the subject of the test and~~  
91 ~~the results of the test to the extent provided by law.~~

92 ~~Information shall also be provided on the fact that a positive~~  
93 ~~HIV test result will be reported to the county health department~~  
94 ~~with sufficient information to identify the test subject and on~~  
95 ~~the availability and location of sites at which anonymous~~  
96 ~~testing is performed. As required in paragraph (3) (c), each~~  
97 ~~county health department shall maintain a list of sites at which~~  
98 ~~anonymous testing is performed, including the locations, phone~~  
99 ~~numbers, and hours of operation of the sites. Consent need not~~  
100 ~~be in writing provided there is documentation in the medical~~  
101 ~~record that the test has been explained and the consent has been~~  
102 ~~obtained.~~

103 2. In a nonhealth care setting, a provider shall obtain the  
104 informed consent of the person upon whom the test is being  
105 performed. Informed consent shall be preceded by an explanation  
106 of the right to confidential treatment of information  
107 identifying the subject of the test and the results of the test  
108 as provided by law.

109  
110 The test subject shall also be informed that a positive HIV test  
111 result will be reported to the county health department with  
112 sufficient information to identify the test subject and on the  
113 availability and location of sites at which anonymous testing is  
114 performed. As required in paragraph (3) (c), each county health  
115 department shall maintain a list of sites at which anonymous  
116 testing is performed, including the locations, telephone

12-01300A-14

20141470\_\_

117 numbers, and hours of operation of the sites.

118 (b) Except as provided in paragraph (h), informed consent  
119 must be obtained from a legal guardian or other person  
120 authorized by law if ~~when~~ the person:

121 1. Is not competent, is incapacitated, or is otherwise  
122 unable to make an informed judgment; or

123 2. Has not reached the age of majority, except as provided  
124 in s. 384.30.

125 (g) Human immunodeficiency virus test results contained in  
126 the medical records of a hospital licensed under chapter 395 may  
127 be released in accordance with s. 395.3025 without being subject  
128 to ~~the requirements of~~ subparagraph (e)2., subparagraph (e)9.,  
129 or paragraph (f) if; ~~provided~~ the hospital has notified the  
130 patient of the limited confidentiality protections afforded HIV  
131 test results contained in hospital medical records ~~obtained~~  
132 ~~written informed consent for the HIV test in accordance with~~  
133 ~~provisions of this section.~~

134 (h) Notwithstanding ~~the provisions of~~ paragraph (a),  
135 informed consent is not required:

136 1. When testing for sexually transmissible diseases is  
137 required by state or federal law, or by rule including the  
138 following situations:

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

141 b. HIV testing of inmates pursuant to s. 945.355 before  
142 ~~prior to their~~ release from prison by reason of parole,  
143 accumulation of gain-time credits, or expiration of sentence.

144 c. Testing for HIV by a medical examiner in accordance with  
145 s. 406.11.

12-01300A-14

20141470\_\_

146 ~~d. HIV testing of pregnant women pursuant to s. 384.31.~~

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

149 3. For the performance of an HIV-related test by licensed  
150 medical personnel in bona fide medical emergencies if ~~when~~ the  
151 test results are necessary for medical diagnostic purposes to  
152 provide appropriate emergency care or treatment to the person  
153 being tested and the patient is unable to consent, as supported  
154 by documentation in the medical record. Notification of test  
155 results in accordance with paragraph (c) is required.

156 4. For the performance of an HIV-related test by licensed  
157 medical personnel for medical diagnosis of acute illness where,  
158 in the opinion of the attending physician, providing  
159 notification ~~obtaining informed consent~~ would be detrimental to  
160 the patient, as supported by documentation in the medical  
161 record, and the test results are necessary for medical  
162 diagnostic purposes to provide appropriate care or treatment to  
163 the person being tested. Notification of test results in  
164 accordance with paragraph (c) is required if it would not be  
165 detrimental to the patient. This subparagraph does not authorize  
166 the routine testing of patients for HIV infection without  
167 notification ~~informed consent~~.

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

170 6. For the performance of an HIV test upon a defendant  
171 pursuant to the victim's request in a prosecution for any type  
172 of sexual battery where a blood sample is taken from the  
173 defendant voluntarily, pursuant to court order for any purpose,  
174 or pursuant to ~~the provisions of~~ s. 775.0877, s. 951.27, or s.

12-01300A-14

20141470\_\_

175 960.003; however, the results of an ~~any~~ HIV test performed shall  
176 be disclosed solely to the victim and the defendant, except as  
177 provided in ss. 775.0877, 951.27, and 960.003.

178 7. If ~~When~~ an HIV test is mandated by court order.

179 8. For epidemiological research pursuant to s. 381.0031,  
180 for research consistent with institutional review boards created  
181 by 45 C.F.R. part 46, or for the performance of an HIV-related  
182 test for the purpose of research, if the testing is performed in  
183 a manner by which the identity of the test subject is not known  
184 and may not be retrieved by the researcher.

185 9. If ~~When~~ human tissue is collected lawfully without the  
186 consent of the donor for corneal removal as authorized by s.  
187 765.5185 or enucleation of the eyes as authorized by s. 765.519.

188 10. For the performance of an HIV test upon an individual  
189 who comes into contact with medical personnel in such a way that  
190 a significant exposure has occurred during the course of  
191 employment or within the scope of practice and where a blood  
192 sample is available which ~~that~~ was taken from that individual  
193 voluntarily by medical personnel for other purposes. The term  
194 "medical personnel" includes a licensed or certified health care  
195 professional; an employee of a health care professional or  
196 health care facility; employees of a laboratory licensed under  
197 chapter 483; personnel of a blood bank or plasma center; a  
198 medical student or other student who is receiving training as a  
199 health care professional at a health care facility; and a  
200 paramedic or emergency medical technician certified by the  
201 department to perform life-support procedures under s. 401.23.

202 a. Before performing ~~Prior to performance of~~ an HIV test on  
203 a voluntarily obtained blood sample, the individual from whom

12-01300A-14

20141470\_\_

204 the blood was obtained shall be requested to consent to the  
205 performance of the test and to the release of the results. If  
206 consent cannot be obtained within the time necessary to perform  
207 the HIV test and begin prophylactic treatment of the exposed  
208 medical personnel, all information concerning the performance of  
209 an HIV test and any HIV test result shall be documented only in  
210 the medical personnel's record unless the individual gives  
211 written consent to entering this information on the individual's  
212 medical record.

213       b. Reasonable attempts to locate the individual and to  
214 obtain consent shall be made, and all attempts must be  
215 documented. If the individual cannot be found or is incapable of  
216 providing consent, an HIV test may be conducted on the available  
217 blood sample. If the individual does not voluntarily consent to  
218 the performance of an HIV test, the individual shall be informed  
219 that an HIV test will be performed, and counseling shall be  
220 furnished as provided in this section. However, HIV testing  
221 shall be conducted only after appropriate medical personnel  
222 under the supervision of a licensed physician documents, in the  
223 medical record of the medical personnel, that there has been a  
224 significant exposure and that, in accordance with the written  
225 protocols based on the National Centers for Disease Control and  
226 Prevention guidelines on HIV postexposure prophylaxis and in the  
227 physician's medical judgment, the information is medically  
228 necessary to determine the course of treatment for the medical  
229 personnel.

230       c. Costs of an ~~any~~ HIV test of a blood sample performed  
231 with or without the consent of the individual, as provided in  
232 this subparagraph, shall be borne by the medical personnel or



12-01300A-14

20141470\_\_

233 the employer of the medical personnel. However, costs of testing  
234 or treatment not directly related to the initial HIV tests or  
235 costs of subsequent testing or treatment may not be borne by the  
236 medical personnel or the employer of the medical personnel.

237 d. In order to use ~~utilize~~ the provisions of this  
238 subparagraph, the medical personnel must ~~either~~ be tested for  
239 HIV pursuant to this section or provide the results of an HIV  
240 test taken within 6 months before ~~prior to~~ the significant  
241 exposure if such test results are negative.

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

246 f. If the source of the exposure will not voluntarily  
247 submit to HIV testing and a blood sample is not available, the  
248 medical personnel or the employer of such person acting on  
249 behalf of the employee may seek a court order directing the  
250 source of the exposure to submit to HIV testing. A sworn  
251 statement by a physician licensed under chapter 458 or chapter  
252 459 that a significant exposure has occurred and that, in the  
253 physician's medical judgment, testing is medically necessary to  
254 determine the course of treatment constitutes probable cause for  
255 the issuance of an order by the court. The results of the test  
256 shall be released to the source of the exposure and to the  
257 person who experienced the exposure.

258 11. For the performance of an HIV test upon an individual  
259 who comes into contact with medical personnel in such a way that  
260 a significant exposure has occurred during the course of  
261 employment or within the scope of practice of the medical

12-01300A-14

20141470\_\_

262 personnel while the medical personnel provides emergency medical  
263 treatment to the individual; or notwithstanding s. 384.287, an  
264 individual who comes into contact with nonmedical personnel in  
265 such a way that a significant exposure has occurred while the  
266 nonmedical personnel provides emergency medical assistance  
267 during a medical emergency. For the purposes of this  
268 subparagraph, a medical emergency means an emergency medical  
269 condition outside of a hospital or health care facility that  
270 provides physician care. The test may be performed only during  
271 the course of treatment for the medical emergency.

272 a. An individual who is capable of providing consent shall  
273 be requested to consent to an HIV test before ~~prior to the~~  
274 testing. If consent cannot be obtained within the time necessary  
275 to perform the HIV test and begin prophylactic treatment of the  
276 exposed medical personnel and nonmedical personnel, all  
277 information concerning the performance of an HIV test and its  
278 result, shall be documented only in the medical personnel's or  
279 nonmedical personnel's record unless the individual gives  
280 written consent to entering this information in ~~on~~ the  
281 individual's medical record.

282 b. HIV testing shall be conducted only after appropriate  
283 medical personnel under the supervision of a licensed physician  
284 documents, in the medical record of the medical personnel or  
285 nonmedical personnel, that there has been a significant exposure  
286 and that, in accordance with the written protocols based on the  
287 National Centers for Disease Control and Prevention guidelines  
288 on HIV postexposure prophylaxis and in the physician's medical  
289 judgment, the information is medically necessary to determine  
290 the course of treatment for the medical personnel or nonmedical

12-01300A-14

20141470\_\_

291 personnel.

292 c. Costs of any HIV test performed with or without the  
293 consent of the individual, as provided in this subparagraph,  
294 shall be borne by the medical personnel or the employer of the  
295 medical personnel or nonmedical personnel. However, costs of  
296 testing or treatment not directly related to the initial HIV  
297 tests or costs of subsequent testing or treatment may not be  
298 borne by the medical personnel or the employer of the medical  
299 personnel or nonmedical personnel.

300 d. In order to use ~~utilize~~ the provisions of this  
301 subparagraph, the medical personnel or nonmedical personnel  
302 shall be tested for HIV pursuant to this section or shall  
303 provide the results of an HIV test taken within 6 months before  
304 ~~prior to~~ the significant exposure if such test results are  
305 negative.

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

310 f. If the source of the exposure will not voluntarily  
311 submit to HIV testing and a blood sample was not obtained during  
312 treatment for the medical emergency, the medical personnel, the  
313 employer of the medical personnel acting on behalf of the  
314 employee, or the nonmedical personnel may seek a court order  
315 directing the source of the exposure to submit to HIV testing. A  
316 sworn statement by a physician licensed under chapter 458 or  
317 chapter 459 that a significant exposure has occurred and that,  
318 in the physician's medical judgment, testing is medically  
319 necessary to determine the course of treatment constitutes

12-01300A-14

20141470\_\_

320 probable cause for the issuance of an order by the court. The  
321 results of the test shall be released to the source of the  
322 exposure and to the person who experienced the exposure.

323 12. For the performance of an HIV test by the medical  
324 examiner or attending physician upon an individual who expired  
325 or could not be resuscitated while receiving emergency medical  
326 assistance or care and who was the source of a significant  
327 exposure to medical or nonmedical personnel providing such  
328 assistance or care.

329 a. HIV testing may be conducted only after appropriate  
330 medical personnel under the supervision of a licensed physician  
331 documents in the medical record of the medical personnel or  
332 nonmedical personnel that there has been a significant exposure  
333 and that, in accordance with the written protocols based on the  
334 National Centers for Disease Control and Prevention guidelines  
335 on HIV postexposure prophylaxis and in the physician's medical  
336 judgment, the information is medically necessary to determine  
337 the course of treatment for the medical personnel or nonmedical  
338 personnel.

339 b. Costs of an ~~any~~ HIV test performed under this  
340 subparagraph may not be charged to the deceased or to the family  
341 of the deceased person.

342 c. For ~~the provisions of~~ this subparagraph to be  
343 applicable, the medical personnel or nonmedical personnel must  
344 be tested for HIV under this section or must provide the results  
345 of an HIV test taken within 6 months before the significant  
346 exposure if such test results are negative.

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

12-01300A-14

20141470\_\_

349           13. For the performance of an HIV-related test medically  
350 indicated by licensed medical personnel for medical diagnosis of  
351 a hospitalized infant as necessary to provide appropriate care  
352 and treatment of the infant if ~~when~~, after a reasonable attempt,  
353 a parent cannot be contacted to provide consent. The medical  
354 records of the infant must ~~shall~~ reflect the reason consent of  
355 the parent was not initially obtained. Test results shall be  
356 provided to the parent when the parent is located.

357           14. For the performance of HIV testing conducted to monitor  
358 the clinical progress of a patient previously diagnosed to be  
359 HIV positive.

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

362           (4) HUMAN IMMUNODEFICIENCY VIRUS TESTING REQUIREMENTS;  
363 REGISTRATION WITH THE DEPARTMENT OF HEALTH; EXEMPTIONS FROM  
364 REGISTRATION.—No county health department and no other person in  
365 this state shall conduct or hold themselves out to the public as  
366 conducting a testing program for acquired immune deficiency  
367 syndrome or human immunodeficiency virus status without first  
368 registering with the Department of Health, reregistering each  
369 year, complying with all other applicable provisions of state  
370 law, and meeting the following requirements:

371           (d) A program in a health care setting shall meet the  
372 notification criteria contained in subparagraph (2) (a)1. A  
373 program in a nonhealth care setting shall meet all informed  
374 consent criteria contained in subparagraph (2) (a)2. ~~The program~~  
375 ~~must meet all the informed consent criteria contained in~~  
376 ~~subsection (2).~~

377           Section 2. Subsection (2) of section 456.032, Florida

12-01300A-14

20141470\_\_

378 Statutes, is amended to read:

379 456.032 Hepatitis B or HIV carriers.—

380 (2) Any person licensed by the department and any other  
381 person employed by a health care facility who contracts a blood-  
382 borne infection shall have a rebuttable presumption that the  
383 illness was contracted in the course and scope of his or her  
384 employment, provided that the person, as soon as practicable,  
385 reports to the person's supervisor or the facility's risk  
386 manager any significant exposure, as that term is defined in s.  
387 381.004(1)~~(e)~~, to blood or body fluids. The employer may test  
388 the blood or body fluid to determine if it is infected with the  
389 same disease contracted by the employee. The employer may rebut  
390 the presumption by the preponderance of the evidence. Except as  
391 expressly provided in this subsection, there shall be no  
392 presumption that a blood-borne infection is a job-related injury  
393 or illness.

394 Section 3. This act shall take effect July 1, 2014.