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LEGISLATIVE ACTION

Senate

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House

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Floor: WD/3R

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05/02/2014 05:08 PM

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Senator Thompson moved the following:

Senate Amendment (with title amendment)

Before line 218

insert:

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

381.004 HIV testing.—

(1) DEFINITIONS.—As used in this section, the term:

(a) “Health care setting” means a setting devoted to both



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12 the diagnosis and care of persons, such as county health
13 department clinics, hospital emergency departments, urgent care
14 clinics, substance abuse treatment clinics, primary care
15 settings, community clinics, mobile medical clinics, and
16 correctional health care facilities.

17 (b) (a) "HIV test" means a test ordered after July 6, 1988,
18 to determine the presence of the antibody or antigen to human
19 immunodeficiency virus or the presence of human immunodeficiency
20 virus infection.

21 (c) (b) "HIV test result" means a laboratory report of a
22 human immunodeficiency virus test result entered into a medical
23 record on or after July 6, 1988, or any report or notation in a
24 medical record of a laboratory report of a human
25 immunodeficiency virus test. ~~As used in this section,~~ The term
26 "~~HIV test result~~" does not include test results reported to a
27 health care provider by a patient.

28 (d) "Non-health care setting" means a site that conducts
29 HIV testing for the sole purpose of identifying HIV infection.
30 Such setting does not provide medical treatment but may include
31 community-based organizations, outreach settings, county health
32 department HIV testing programs, and mobile vans.

33 (f) (e) "Significant exposure" means:

34 1. Exposure to blood or body fluids through needlestick,
35 instruments, or sharps;

36 2. Exposure of mucous membranes to visible blood or body
37 fluids, to which universal precautions apply according to the
38 National Centers for Disease Control and Prevention, including,
39 without limitations, the following body fluids:

40 a. Blood.



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- 41 b. Semen.
42 c. Vaginal secretions.
43 d. Cerebrospinal ~~Cerebro-spinal~~ fluid (CSF).
44 e. Synovial fluid.
45 f. Pleural fluid.
46 g. Peritoneal fluid.
47 h. Pericardial fluid.
48 i. Amniotic fluid.
49 j. Laboratory specimens that contain HIV (e.g., suspensions
50 of concentrated virus); or

51 3. Exposure of skin to visible blood or body fluids,
52 especially when the exposed skin is chapped, abraded, or
53 afflicted with dermatitis or the contact is prolonged or
54 involving an extensive area.

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

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

64 (2) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED CONSENT;
65 RESULTS; COUNSELING; CONFIDENTIALITY.—

66 (a) Before performing an HIV test:

67 1. In a health care setting, the person to be tested shall
68 be provided information about the test, and notified that the
69 test is planned, that he or she has the right to decline the



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70 test, and that he or she has the right to confidential treatment
71 of information identifying the subject of the test and the
72 results of the test as provided by law. If the person to be
73 tested declines the test, such decision shall be documented in
74 the medical record ~~No person in this state shall order a test~~
75 ~~designed to identify the human immunodeficiency virus, or its~~
76 ~~antigen or antibody, without first obtaining the informed~~
77 ~~consent of the person upon whom the test is being performed,~~
78 ~~except as specified in paragraph (h). Informed consent shall be~~
79 ~~preceded by an explanation of the right to confidential~~
80 ~~treatment of information identifying the subject of the test and~~
81 ~~the results of the test to the extent provided by law.~~
82 ~~Information shall also be provided on the fact that a positive~~
83 ~~HIV test result will be reported to the county health department~~
84 ~~with sufficient information to identify the test subject and on~~
85 ~~the availability and location of sites at which anonymous~~
86 ~~testing is performed. As required in paragraph (3) (c), each~~
87 ~~county health department shall maintain a list of sites at which~~
88 ~~anonymous testing is performed, including the locations, phone~~
89 ~~numbers, and hours of operation of the sites. Consent need not~~
90 ~~be in writing provided there is documentation in the medical~~
91 ~~record that the test has been explained and the consent has been~~
92 ~~obtained.~~

93 2. In a non-health care setting, a provider shall obtain
94 the informed consent of the person upon whom the test is being
95 performed. Informed consent shall be preceded by an explanation
96 of the right to confidential treatment of information
97 identifying the subject of the test and the results of the test
98 as provided by law.



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100 The test subject shall also be informed that a positive HIV test
101 result will be reported to the county health department with
102 sufficient information to identify the test subject and on the
103 availability and location of sites at which anonymous testing is
104 performed. As required in paragraph (3)(c), each county health
105 department shall maintain a list of sites at which anonymous
106 testing is performed, including the locations, telephone
107 numbers, and hours of operation of the sites.

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

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

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

115 (g) Human immunodeficiency virus test results contained in
116 the medical records of a hospital licensed under chapter 395 may
117 be released in accordance with s. 395.3025 without being subject
118 to ~~the requirements of~~ subparagraph (e)2., subparagraph (e)9.,
119 or paragraph (f) if; ~~provided~~ the hospital has notified the
120 patient of the limited confidentiality protections afforded HIV
121 test results contained in hospital medical records ~~obtained~~
122 ~~written informed consent for the HIV test in accordance with~~
123 ~~provisions of this section.~~

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

126 1. When testing for sexually transmissible diseases is
127 required by state or federal law, or by rule including the



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128 following situations:

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

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

134 c. Testing for HIV by a medical examiner in accordance with
135 s. 406.11.

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

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

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

146 4. For the performance of an HIV-related test by licensed
147 medical personnel for medical diagnosis of acute illness where,
148 in the opinion of the attending physician, providing
149 notification ~~obtaining informed consent~~ would be detrimental to
150 the patient, as supported by documentation in the medical
151 record, and the test results are necessary for medical
152 diagnostic purposes to provide appropriate care or treatment to
153 the person being tested. Notification of test results in
154 accordance with paragraph (c) is required if it would not be
155 detrimental to the patient. This subparagraph does not authorize
156 the routine testing of patients for HIV infection without



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157 notification informed consent.

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

160 6. For the performance of an HIV test upon a defendant
161 pursuant to the victim's request in a prosecution for any type
162 of sexual battery where a blood sample is taken from the
163 defendant voluntarily, pursuant to court order for any purpose,
164 or pursuant to ~~the provisions of~~ s. 775.0877, s. 951.27, or s.
165 960.003; however, the results of an ~~any~~ HIV test performed shall
166 be disclosed solely to the victim and the defendant, except as
167 provided in ss. 775.0877, 951.27, and 960.003.

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

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

175 9. If ~~When~~ human tissue is collected lawfully without the
176 consent of the donor for corneal removal as authorized by s.
177 765.5185 or enucleation of the eyes as authorized by s. 765.519.

178 10. For the performance of an HIV test upon an individual
179 who comes into contact with medical personnel in such a way that
180 a significant exposure has occurred during the course of
181 employment or within the scope of practice and where a blood
182 sample is available which ~~that~~ was taken from that individual
183 voluntarily by medical personnel for other purposes. The term
184 "medical personnel" includes a licensed or certified health care
185 professional; an employee of a health care professional or



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186 health care facility; employees of a laboratory licensed under
187 chapter 483; personnel of a blood bank or plasma center; a
188 medical student or other student who is receiving training as a
189 health care professional at a health care facility; and a
190 paramedic or emergency medical technician certified by the
191 department to perform life-support procedures under s. 401.23.

192 a. ~~Before performing~~ ~~Prior to performance of~~ an HIV test on
193 a voluntarily obtained blood sample, the individual from whom
194 the blood was obtained shall be requested to consent to the
195 performance of the test and to the release of the results. If
196 consent cannot be obtained within the time necessary to perform
197 the HIV test and begin prophylactic treatment of the exposed
198 medical personnel, all information concerning the performance of
199 an HIV test and any HIV test result shall be documented only in
200 the medical personnel's record unless the individual gives
201 written consent to entering this information on the individual's
202 medical record.

203 b. Reasonable attempts to locate the individual and to
204 obtain consent shall be made, and all attempts must be
205 documented. If the individual cannot be found or is incapable of
206 providing consent, an HIV test may be conducted on the available
207 blood sample. If the individual does not voluntarily consent to
208 the performance of an HIV test, the individual shall be informed
209 that an HIV test will be performed, and counseling shall be
210 furnished as provided in this section. However, HIV testing
211 shall be conducted only after appropriate medical personnel
212 under the supervision of a licensed physician documents, in the
213 medical record of the medical personnel, that there has been a
214 significant exposure and that, in accordance with the written



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215 protocols based on the National Centers for Disease Control and
216 Prevention guidelines on HIV postexposure prophylaxis and in the
217 physician's medical judgment, the information is medically
218 necessary to determine the course of treatment for the medical
219 personnel.

220 c. Costs of an ~~any~~ HIV test of a blood sample performed
221 with or without the consent of the individual, as provided in
222 this subparagraph, shall be borne by the medical personnel or
223 the employer of the medical personnel. However, costs of testing
224 or treatment not directly related to the initial HIV tests or
225 costs of subsequent testing or treatment may not be borne by the
226 medical personnel or the employer of the medical personnel.

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

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

236 f. If the source of the exposure will not voluntarily
237 submit to HIV testing and a blood sample is not available, the
238 medical personnel or the employer of such person acting on
239 behalf of the employee may seek a court order directing the
240 source of the exposure to submit to HIV testing. A sworn
241 statement by a physician licensed under chapter 458 or chapter
242 459 that a significant exposure has occurred and that, in the
243 physician's medical judgment, testing is medically necessary to



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244 determine the course of treatment constitutes probable cause for
245 the issuance of an order by the court. The results of the test
246 shall be released to the source of the exposure and to the
247 person who experienced the exposure.

248 11. For the performance of an HIV test upon an individual
249 who comes into contact with medical personnel in such a way that
250 a significant exposure has occurred during the course of
251 employment or within the scope of practice of the medical
252 personnel while the medical personnel provides emergency medical
253 treatment to the individual; or notwithstanding s. 384.287, an
254 individual who comes into contact with nonmedical personnel in
255 such a way that a significant exposure has occurred while the
256 nonmedical personnel provides emergency medical assistance
257 during a medical emergency. For the purposes of this
258 subparagraph, a medical emergency means an emergency medical
259 condition outside of a hospital or health care facility that
260 provides physician care. The test may be performed only during
261 the course of treatment for the medical emergency.

262 a. An individual who is capable of providing consent shall
263 be requested to consent to an HIV test before ~~prior to the~~
264 testing. If consent cannot be obtained within the time necessary
265 to perform the HIV test and begin prophylactic treatment of the
266 exposed medical personnel and nonmedical personnel, all
267 information concerning the performance of an HIV test and its
268 result, shall be documented only in the medical personnel's or
269 nonmedical personnel's record unless the individual gives
270 written consent to entering this information in ~~on~~ the
271 individual's medical record.

272 b. HIV testing shall be conducted only after appropriate



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273 medical personnel under the supervision of a licensed physician
274 documents, in the medical record of the medical personnel or
275 nonmedical personnel, that there has been a significant exposure
276 and that, in accordance with the written protocols based on the
277 National Centers for Disease Control and Prevention guidelines
278 on HIV postexposure prophylaxis and in the physician's medical
279 judgment, the information is medically necessary to determine
280 the course of treatment for the medical personnel or nonmedical
281 personnel.

282 c. Costs of any HIV test performed with or without the
283 consent of the individual, as provided in this subparagraph,
284 shall be borne by the medical personnel or the employer of the
285 medical personnel or nonmedical personnel. However, costs of
286 testing or treatment not directly related to the initial HIV
287 tests or costs of subsequent testing or treatment may not be
288 borne by the medical personnel or the employer of the medical
289 personnel or nonmedical personnel.

290 d. In order to use ~~utilize~~ the provisions of this
291 subparagraph, the medical personnel or nonmedical personnel
292 shall be tested for HIV pursuant to this section or shall
293 provide the results of an HIV test taken within 6 months before
294 ~~prior to~~ the significant exposure if such test results are
295 negative.

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

300 f. If the source of the exposure will not voluntarily
301 submit to HIV testing and a blood sample was not obtained during



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302 treatment for the medical emergency, the medical personnel, the
303 employer of the medical personnel acting on behalf of the
304 employee, or the nonmedical personnel may seek a court order
305 directing the source of the exposure to submit to HIV testing. A
306 sworn statement by a physician licensed under chapter 458 or
307 chapter 459 that a significant exposure has occurred and that,
308 in the physician's medical judgment, testing is medically
309 necessary to determine the course of treatment constitutes
310 probable cause for the issuance of an order by the court. The
311 results of the test shall be released to the source of the
312 exposure and to the person who experienced the exposure.

313 12. For the performance of an HIV test by the medical
314 examiner or attending physician upon an individual who expired
315 or could not be resuscitated while receiving emergency medical
316 assistance or care and who was the source of a significant
317 exposure to medical or nonmedical personnel providing such
318 assistance or care.

319 a. HIV testing may be conducted only after appropriate
320 medical personnel under the supervision of a licensed physician
321 documents in the medical record of the medical personnel or
322 nonmedical personnel that there has been a significant exposure
323 and that, in accordance with the written protocols based on the
324 National Centers for Disease Control and Prevention guidelines
325 on HIV postexposure prophylaxis and in the physician's medical
326 judgment, the information is medically necessary to determine
327 the course of treatment for the medical personnel or nonmedical
328 personnel.

329 b. Costs of an ~~any~~ HIV test performed under this
330 subparagraph may not be charged to the deceased or to the family



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331 of the deceased person.

332 c. For ~~the provisions of~~ this subparagraph to be
333 applicable, the medical personnel or nonmedical personnel must
334 be tested for HIV under this section or must provide the results
335 of an HIV test taken within 6 months before the significant
336 exposure if such test results are negative.

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

339 13. For the performance of an HIV-related test medically
340 indicated by licensed medical personnel for medical diagnosis of
341 a hospitalized infant as necessary to provide appropriate care
342 and treatment of the infant if ~~when~~, after a reasonable attempt,
343 a parent cannot be contacted to provide consent. The medical
344 records of the infant must ~~shall~~ reflect the reason consent of
345 the parent was not initially obtained. Test results shall be
346 provided to the parent when the parent is located.

347 14. For the performance of HIV testing conducted to monitor
348 the clinical progress of a patient previously diagnosed to be
349 HIV positive.

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

352 (4) HUMAN IMMUNODEFICIENCY VIRUS TESTING REQUIREMENTS;
353 REGISTRATION WITH THE DEPARTMENT OF HEALTH; EXEMPTIONS FROM
354 REGISTRATION.—No county health department and no other person in
355 this state shall conduct or hold themselves out to the public as
356 conducting a testing program for acquired immune deficiency
357 syndrome or human immunodeficiency virus status without first
358 registering with the Department of Health, reregistering each
359 year, complying with all other applicable provisions of state



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360 law, and meeting the following requirements:

361 (d) A program in a health care setting shall meet the
362 notification criteria contained in subparagraph (2)(a)1. A
363 program in a non-health care setting shall meet all informed
364 consent criteria contained in subparagraph (2)(a)2 ~~The program~~
365 ~~must meet all the informed consent criteria contained in~~
366 ~~subsection (2).~~

367 Section 2. Subsection (2) of section 456.032, Florida
368 Statutes, is amended to read:

369 456.032 Hepatitis B or HIV carriers.—

370 (2) Any person licensed by the department and any other
371 person employed by a health care facility who contracts a blood-
372 borne infection shall have a rebuttable presumption that the
373 illness was contracted in the course and scope of his or her
374 employment, provided that the person, as soon as practicable,
375 reports to the person's supervisor or the facility's risk
376 manager any significant exposure, as that term is defined in s.
377 381.004(1) ~~381.004(1)(c)~~, to blood or body fluids. The employer
378 may test the blood or body fluid to determine if it is infected
379 with the same disease contracted by the employee. The employer
380 may rebut the presumption by the preponderance of the evidence.
381 Except as expressly provided in this subsection, there shall be
382 no presumption that a blood-borne infection is a job-related
383 injury or illness.

384
385 ===== T I T L E A M E N D M E N T =====

386 And the title is amended as follows:

387 Delete line 2

388 and insert:



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389 An act relating to health care; amending s. 381.004,
390 F.S.; revising and providing definitions; specifying
391 the notification and consent procedures for performing
392 an HIV test in a health care setting and a non-health
393 care setting; amending s. 456.032, F.S.; conforming a
394 cross-reference; amending s. 395.1051,