

1                                   A bill to be entitled  
 2           An act relating to HIV testing; amending s. 381.004,  
 3           F.S.; revising and providing definitions; specifying  
 4           the notification and consent procedures for performing  
 5           an HIV test in a health care setting and a nonhealth  
 6           care setting; providing an effective date.

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 8   Be It Enacted by the Legislature of the State of Florida:

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

14           381.004 HIV testing.—

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

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

22           **(b)**~~(a)~~ "HIV test" means a test ordered after July 6, 1988,  
 23 to determine the presence of the antibody or antigen to human  
 24 immunodeficiency virus or the presence of human immunodeficiency  
 25 virus infection.

26           **(c)**~~(b)~~ "HIV test result" means a laboratory report of a

27 human immunodeficiency virus test result entered into a medical  
 28 record on or after July 6, 1988, or any report or notation in a  
 29 medical record of a laboratory report of a human  
 30 immunodeficiency virus test. ~~As used in this section,~~ The term  
 31 ~~"HIV test result"~~ does not include test results reported to a  
 32 health care provider by a patient.

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

38 (f)-(e) "Significant exposure" means:

- 39 1. Exposure to blood or body fluids through needlestick,  
 40 instruments, or sharps;
- 41 2. Exposure of mucous membranes to visible blood or body  
 42 fluids, to which universal precautions apply according to the  
 43 National Centers for Disease Control and Prevention, including,  
 44 without limitations, the following body fluids:
  - 45 a. Blood.
  - 46 b. Semen.
  - 47 c. Vaginal secretions.
  - 48 d. Cerebrospinal ~~Cerebro-spinal~~ fluid (CSF).
  - 49 e. Synovial fluid.
  - 50 f. Pleural fluid.
  - 51 g. Peritoneal fluid.
  - 52 h. Pericardial fluid.

53 i. Amniotic fluid.

54 j. Laboratory specimens that contain HIV (e.g.,

55 suspensions of concentrated virus); or

56 3. Exposure of skin to visible blood or body fluids,

57 especially when the exposed skin is chapped, abraded, or

58 afflicted with dermatitis or the contact is prolonged or

59 involving an extensive area.

60 (e)~~(d)~~ "Preliminary HIV test" means an antibody or

61 antibody-antigen screening test, such as the ~~enzyme-linked~~

62 immunosorbent assays (IA), or a rapid test approved by the

63 United States Food and Drug Administration ~~(ELISAs)~~ or the

64 ~~Single-Use Diagnostic System (SUDS)~~.

65 (g)~~(e)~~ "Test subject" or "subject of the test" means the

66 person upon whom an HIV test is performed, or the person who has

67 legal authority to make health care decisions for the test

68 subject.

69 (2) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED

70 CONSENT; RESULTS; COUNSELING; CONFIDENTIALITY.—

71 (a) Before performing an HIV test:

72 1. In a health care setting, the person to be tested shall

73 be provided information about the test and shall be notified

74 that the test is planned, that he or she has the right to

75 decline the test, and that he or she has the right to

76 confidential treatment of information identifying the subject of

77 the test and the results of the test as provided by law. If the

78 person to be tested declines the test, such decision shall be

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

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

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

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

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

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

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

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

131           1. When testing for sexually transmissible diseases is  
 132 required by state or federal law, or by rule including the  
 133 following situations:

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

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

139           c. Testing for HIV by a medical examiner in accordance  
 140 with s. 406.11.

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

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

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

151           4. For the performance of an HIV-related test by licensed  
 152 medical personnel for medical diagnosis of acute illness where,  
 153 in the opinion of the attending physician, providing  
 154 notification ~~obtaining informed consent~~ would be detrimental to  
 155 the patient, as supported by documentation in the medical  
 156 record, and the test results are necessary for medical

157 diagnostic purposes to provide appropriate care or treatment to  
158 the person being tested. Notification of test results in  
159 accordance with paragraph (c) is required if it would not be  
160 detrimental to the patient. This subparagraph does not authorize  
161 the routine testing of patients for HIV infection without  
162 notification ~~informed consent~~.

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

165 6. For the performance of an HIV test upon a defendant  
166 pursuant to the victim's request in a prosecution for any type  
167 of sexual battery where a blood sample is taken from the  
168 defendant voluntarily, pursuant to court order for any purpose,  
169 or pursuant to ~~the provisions of~~ s. 775.0877, s. 951.27, or s.  
170 960.003; however, the results of an ~~any~~ HIV test performed shall  
171 be disclosed solely to the victim and the defendant, except as  
172 provided in ss. 775.0877, 951.27, and 960.003.

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

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

180 9. If ~~When~~ human tissue is collected lawfully without the  
181 consent of the donor for corneal removal as authorized by s.  
182 765.5185 or enucleation of the eyes as authorized by s. 765.519.

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

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

208           b. Reasonable attempts to locate the individual and to



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

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

232 d. In order to use ~~utilize~~ the provisions of this  
233 subparagraph, the medical personnel must ~~either~~ be tested for  
234 HIV pursuant to this section or provide the results of an HIV

235 test taken within 6 months before ~~prior to~~ the significant  
236 exposure if such test results are negative.

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

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

253 11. For the performance of an HIV test upon an individual  
254 who comes into contact with medical personnel in such a way that  
255 a significant exposure has occurred during the course of  
256 employment or within the scope of practice of the medical  
257 personnel while the medical personnel provides emergency medical  
258 treatment to the individual; or notwithstanding s. 384.287, an  
259 individual who comes into contact with nonmedical personnel in  
260 such a way that a significant exposure has occurred while the

261 nonmedical personnel provides emergency medical assistance  
262 during a medical emergency. For the purposes of this  
263 subparagraph, a medical emergency means an emergency medical  
264 condition outside of a hospital or health care facility that  
265 provides physician care. The test may be performed only during  
266 the course of treatment for the medical emergency.

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

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

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

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

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

305 f. If the source of the exposure will not voluntarily  
306 submit to HIV testing and a blood sample was not obtained during  
307 treatment for the medical emergency, the medical personnel, the  
308 employer of the medical personnel acting on behalf of the  
309 employee, or the nonmedical personnel may seek a court order  
310 directing the source of the exposure to submit to HIV testing. A  
311 sworn statement by a physician licensed under chapter 458 or  
312 chapter 459 that a significant exposure has occurred and that,

313 in the physician's medical judgment, testing is medically  
314 necessary to determine the course of treatment constitutes  
315 probable cause for the issuance of an order by the court. The  
316 results of the test shall be released to the source of the  
317 exposure and to the person who experienced the exposure.

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

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

334 b. Costs of an ~~any~~ HIV test performed under this  
335 subparagraph may not be charged to the deceased or to the family  
336 of the deceased person.

337 c. For ~~the provisions of~~ this subparagraph to be  
338 applicable, the medical personnel or nonmedical personnel must

339 be tested for HIV under this section or must provide the results  
 340 of an HIV test taken within 6 months before the significant  
 341 exposure if such test results are negative.

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

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

352 14. For the performance of HIV testing conducted to  
 353 monitor the clinical progress of a patient previously diagnosed  
 354 to be HIV positive.

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

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

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365 law, and meeting the following requirements:

366 (d) A program in a health care setting shall meet the  
367 notification criteria provided in subparagraph (2)(a)1. A  
368 program in a nonhealth care setting shall meet all informed  
369 consent criteria provided in subparagraph (2)(a)2. ~~The program~~  
370 ~~must meet all the informed consent criteria contained in~~  
371 ~~subsection (2).~~

372 Section 2. This act shall take effect July 1, 2015.