



CS/CS/HB 321, Engrossed 1

2015

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 HIV tests in health care and nonhealth care settings;
6 amending s. 456.032, F.S.; conforming a cross-
7 reference; providing an effective date.

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

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

15 381.004 HIV testing.—

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

17 (a) "Health care setting" means a setting devoted to the
18 diagnosis and care of persons or the provision of medical
19 services to persons, such as county health department clinics,
20 hospitals, urgent care clinics, substance abuse treatment
21 clinics, primary care settings, community clinics, blood banks,
22 mobile medical clinics, and correctional health care facilities.

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



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

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

39 (e) ~~(d)~~ "Preliminary HIV test" means an antibody or
40 antibody-antigen screening test, such as the ~~enzyme-linked~~
41 immunosorbent assays (IA), or a rapid test approved by the
42 United States Food and Drug Administration ~~(ELISAs)~~ or the
43 ~~Single-Use Diagnostic System (SUDS).~~

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

45 1. Exposure to blood or body fluids through needlestick,
46 instruments, or sharps;

47 2. Exposure of mucous membranes to visible blood or body
48 fluids, to which universal precautions apply according to the
49 National Centers for Disease Control and Prevention, including,
50 without limitations, the following body fluids:

51 a. Blood.

52 b. Semen.



- 53 | c. Vaginal secretions.
- 54 | d. Cerebrospinal ~~Cerebro-spinal~~ fluid (CSF).
- 55 | e. Synovial fluid.
- 56 | f. Pleural fluid.
- 57 | g. Peritoneal fluid.
- 58 | h. Pericardial fluid.
- 59 | i. Amniotic fluid.
- 60 | j. Laboratory specimens that contain HIV (e.g.,
- 61 | suspensions of concentrated virus); or
- 62 | 3. Exposure of skin to visible blood or body fluids,
- 63 | especially when the exposed skin is chapped, abraded, or
- 64 | afflicted with dermatitis or the contact is prolonged or
- 65 | involving an extensive area.
- 66 | (g) ~~(e)~~ "Test subject" or "subject of the test" means the
- 67 | person upon whom an HIV test is performed, or the person who has
- 68 | legal authority to make health care decisions for the test
- 69 | subject.
- 70 | (2) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED
- 71 | CONSENT; RESULTS; COUNSELING; CONFIDENTIALITY.—
- 72 | (a) Before performing an HIV test:
- 73 | 1. In a health care setting, the person to be tested shall
- 74 | be notified orally or in writing that the test is planned and
- 75 | that he or she has the right to decline the test. If the person
- 76 | to be tested declines the test, such decision shall be
- 77 | documented in the medical record. A person who has signed a
- 78 | general consent form for medical care is not required to sign or



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

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



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

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

- 117 1. Is not competent, is incapacitated, or is otherwise
118 unable to make an informed judgment; or
119 2. Has not reached the age of majority, except as provided
120 in s. 384.30.

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

128 (h) Paragraph (a) does not apply ~~Notwithstanding the~~
129 ~~provisions of paragraph (a), informed consent is not required:~~

- 130 1. When testing for sexually transmissible diseases is



131 required by state or federal law, or by rule, including the
132 following situations:

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

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

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

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

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

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

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



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

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

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

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

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

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

182 10. For the performance of an HIV test upon an individual



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

198 | a. The occurrence of a significant exposure shall be
199 | documented by medical personnel under the supervision of a
200 | licensed physician and recorded only in the personnel record of
201 | the medical personnel ~~Prior to performance of an HIV test on a~~
202 | ~~voluntarily obtained blood sample, the individual from whom the~~
203 | ~~blood was obtained shall be requested to consent to the~~
204 | ~~performance of the test and to the release of the results. If~~
205 | ~~consent cannot be obtained within the time necessary to perform~~
206 | ~~the HIV test and begin prophylactic treatment of the exposed~~
207 | ~~medical personnel, all information concerning the performance of~~
208 | ~~an HIV test and any HIV test result shall be documented only in~~



209 ~~the medical personnel's record unless the individual gives~~
210 ~~written consent to entering this information on the individual's~~
211 ~~medical record.~~

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

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



235 | medical personnel or the employer of the medical personnel.

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

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

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

259 | 11. For the performance of an HIV test upon an individual
260 | who comes into contact with nonmedical ~~medical~~ personnel in such



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

274 a. The occurrence of a significant exposure shall be
275 documented by medical personnel under the supervision of a
276 licensed physician and recorded in the medical record of the
277 nonmedical personnel ~~An individual who is capable of providing~~
278 ~~consent shall be requested to consent to an HIV test prior to~~
279 ~~the testing. If consent cannot be obtained within the time~~
280 ~~necessary to perform the HIV test and begin prophylactic~~
281 ~~treatment of the exposed medical personnel and nonmedical~~
282 ~~personnel, all information concerning the performance of an HIV~~
283 ~~test and its result, shall be documented only in the medical~~
284 ~~personnel's or nonmedical personnel's record unless the~~
285 ~~individual gives written consent to entering this information on~~
286 ~~the individual's medical record.~~



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

297 ~~b.e.~~ Costs of any HIV test performed with or without the
298 consent of the individual, as provided in this subparagraph,
299 shall be borne by the nonmedical ~~medical~~ personnel or the
300 employer of the ~~medical personnel or~~ nonmedical personnel.
301 However, costs of testing or treatment not directly related to
302 the initial HIV tests or costs of subsequent testing or
303 treatment may not be borne by the nonmedical ~~medical~~ personnel
304 or the employer of the ~~medical personnel or~~ nonmedical
305 personnel.

306 ~~c.d.~~ In order to use ~~utilize~~ the provisions of this
307 subparagraph, the ~~medical personnel or~~ nonmedical personnel
308 shall be tested for HIV pursuant to this section or shall
309 provide the results of an HIV test taken within 6 months before
310 ~~prior to~~ the significant exposure if such test results are
311 negative.

312 ~~d.e.~~ A person who receives the results of an HIV test



313 pursuant to this subparagraph shall maintain the confidentiality
314 of the information received and of the persons tested. Such
315 confidential information is exempt from s. 119.07(1).

316 ~~e.f.~~ If the source of the exposure is not available and
317 will not voluntarily present himself or herself to a health
318 facility to be tested for HIV ~~submit to HIV testing and a blood~~
319 ~~sample was not obtained during treatment for the medical~~
320 ~~emergency~~, the nonmedical ~~medical~~ personnel or, the employer of
321 the nonmedical ~~medical~~ personnel acting on behalf of the
322 employee, ~~or the nonmedical personnel~~ may seek a court order
323 directing the source of the exposure to submit to HIV testing. A
324 sworn statement by a physician licensed under chapter 458 or
325 chapter 459 that a significant exposure has occurred and that,
326 in the physician's medical judgment, testing is medically
327 necessary to determine the course of treatment constitutes
328 probable cause for the issuance of an order by the court. The
329 results of the test shall be released to the source of the
330 exposure and to the person who experienced the exposure.

331 12. For the performance of an HIV test by the medical
332 examiner or attending physician upon an individual who expired
333 or could not be resuscitated while receiving emergency medical
334 assistance or care and who was the source of a significant
335 exposure to medical or nonmedical personnel providing such
336 assistance or care.

337 a. HIV testing may be conducted only after appropriate
338 medical personnel under the supervision of a licensed physician



339 documents in the medical record of the medical personnel or
340 nonmedical personnel that there has been a significant exposure
341 and that, in accordance with the written protocols based on the
342 National Centers for Disease Control and Prevention guidelines
343 on HIV postexposure prophylaxis and in the physician's medical
344 judgment, the information is medically necessary to determine
345 the course of treatment for the medical personnel or nonmedical
346 personnel.

347 b. Costs of an ~~any~~ HIV test performed under this
348 subparagraph may not be charged to the deceased or to the family
349 of the deceased person.

350 c. For ~~the provisions of~~ this subparagraph to be
351 applicable, the medical personnel or nonmedical personnel must
352 be tested for HIV under this section or must provide the results
353 of an HIV test taken within 6 months before the significant
354 exposure if such test results are negative.

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

357 13. For the performance of an HIV-related test medically
358 indicated by licensed medical personnel for medical diagnosis of
359 a hospitalized infant as necessary to provide appropriate care
360 and treatment of the infant if ~~when~~, after a reasonable attempt,
361 a parent cannot be contacted to provide consent. The medical
362 records of the infant must ~~shall~~ reflect the reason consent of
363 the parent was not initially obtained. Test results shall be
364 provided to the parent when the parent is located.



365 14. For the performance of HIV testing conducted to
 366 monitor the clinical progress of a patient previously diagnosed
 367 to be HIV positive.

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

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

379 (d) The program must meet all of the requirements ~~informed~~
 380 ~~consent criteria contained~~ in subsection (2).

381 (j) Nothing in this subsection shall be construed to
 382 require a facility licensed under chapter 395 or chapter 483 or
 383 a person licensed under the provisions of chapter 457, chapter
 384 458, chapter 459, chapter 460, chapter 461, chapter 466, or
 385 chapter 467 to register with the Department of Health and comply
 386 with the requirements of this subsection if the testing program
 387 is part of routine medical care or if the facility or person
 388 does not advertise to the general public that the facility or
 389 person conducts ~~if he or she does not advertise or hold himself~~
 390 ~~or herself out to the public as conducting~~ testing programs for



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391 human immunodeficiency virus infection or specializes
392 ~~specializing~~ in such testing.

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

395 456.032 Hepatitis B or HIV carriers.—

396 (2) Any person licensed by the department and any other
397 person employed by a health care facility who contracts a blood-
398 borne infection shall have a rebuttable presumption that the
399 illness was contracted in the course and scope of his or her
400 employment, provided that the person, as soon as practicable,
401 reports to the person's supervisor or the facility's risk
402 manager any significant exposure, as that term is defined in s.
403 381.004(1)(f) ~~381.004(1)(e)~~, to blood or body fluids. The
404 employer may test the blood or body fluid to determine if it is
405 infected with the same disease contracted by the employee. The
406 employer may rebut the presumption by the preponderance of the
407 evidence. Except as expressly provided in this subsection, there
408 shall be no presumption that a blood-borne infection is a job-
409 related injury or illness.

410 Section 3. This act shall take effect July 1, 2015.