Senator Thompson moved the following:

**Senate Amendment (with title amendment)**

Before line 82
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
the diagnosis and care of persons, such as county health
department clinics, hospital emergency departments, urgent care
clinics, substance abuse treatment clinics, primary care
settings, community clinics, mobile medical clinics, and
correctional health care facilities.

(b)(a) “HIV test” means a test ordered after July 6, 1988,
to determine the presence of the antibody or antigen to human
immunodeficiency virus or the presence of human immunodeficiency
virus infection.

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

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

(f)(c) “Significant exposure” means:
1. Exposure to blood or body fluids through needlestick,
instruments, or sharps;
2. Exposure of mucous membranes to visible blood or body
fluids to which universal precautions apply according to the
National Centers for Disease Control and Prevention, including,
without limitations, the following body fluids:
   a. Blood.
b. Semen.

c. Vaginal secretions.

d. Cerebrospinal fluid (CSF).

e. Synovial fluid.

f. Pleural fluid.

g. Peritoneal fluid.

h. Pericardial fluid.

i. Amniotic fluid.

j. Laboratory specimens that contain HIV (e.g., suspensions of concentrated virus); or

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

(e) “Preliminary HIV test” means an antibody or antibody-antigen screening test, such as the enzyme-linked immunosorbent assays (IA), or a rapid test approved by the federal Food and Drug Administration (ELISAs) or the Single-Use Diagnostic System (SUDS).

(g) “Test subject” or “subject of the test” means the person upon whom an HIV test is performed, or the person who has legal authority to make health care decisions for the test subject.

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

(a) Before performing an HIV test:

1. In a health care setting, the person to be tested shall be provided information about the test, and notified that the test is planned, that he or she has the right to decline the
test, and that he or she has the right to confidential treatment of information identifying the subject of the test and the results of the test as provided by law. If the person to be tested declines the test, such decision shall be documented in the medical record. No person in this state shall order a test designed to identify the human immunodeficiency virus, or its antigen or antibody, without first obtaining the informed consent of the person upon whom the test is being performed, except as specified in paragraph (h). Informed consent shall be preceded by an explanation of the right to confidential treatment of information identifying the subject of the test and the results of the test to the extent provided by law. Information shall also be provided on the fact that a positive HIV test result will be reported to the county health department with sufficient information to identify the test subject and on the availability and location of sites at which anonymous testing is performed. As required in paragraph (3)(c), each county health department shall maintain a list of sites at which anonymous testing is performed, including the locations, phone numbers, and hours of operation of the sites. Consent need not be in writing provided there is documentation in the medical record that the test has been explained and the consent has been obtained.

2. In a nonhealth care setting, a provider shall obtain the informed consent of the person upon whom the test is being performed. Informed consent shall be preceded by an explanation of the right to confidential treatment of information identifying the subject of the test and the results of the test as provided by law.
The test subject shall also be informed that a positive HIV test result will be reported to the county health department with sufficient information to identify the test subject and on the availability and location of sites at which anonymous testing is performed. As required in paragraph (3)(c), each county health department shall maintain a list of sites at which anonymous testing is performed, including the locations, telephone numbers, and hours of operation of the sites.

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

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

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

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

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

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

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

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

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

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

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

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

4. For the performance of an HIV-related test by licensed medical personnel for medical diagnosis of acute illness where, in the opinion of the attending physician, providing notification obtaining informed consent would be detrimental to the patient, as supported by documentation in the medical record, and the test results are necessary for medical diagnostic purposes to provide appropriate care or treatment to the person being tested. Notification of test results in accordance with paragraph (c) is required if it would not be detrimental to the patient. This subparagraph does not authorize the routine testing of patients for HIV infection without
5. If HIV testing is performed as part of an autopsy for which consent was obtained pursuant to s. 872.04.

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

7. If an HIV test is mandated by court order.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) A program in a health care setting shall meet the notification criteria contained in subparagraph (2)(a)1. A program in a nonhealth care setting shall meet all informed consent criteria contained in subparagraph (2)(a)2. The program must meet all the informed consent criteria contained in subsection (2).

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

456.032 Hepatitis B or HIV carriers.—

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

And the title is amended as follows:

Delete line 2

and insert:
An act relating to health care services; amending s. 381.004, F.S.; revising and providing definitions; specifying the notification and consent procedures for performing an HIV test in a health care setting and a nonhealth care setting; amending s. 456.032, F.S.; conforming a cross-reference;