



532310

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/17/2015	.	
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The Committee on Health Policy (Braynon) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

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

381.004 HIV testing.—



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11 (1) DEFINITIONS.—As used in this section, the term:  
12 (a) “Health care setting” means a setting devoted to the  
13 diagnosis and care of persons or the provision of medical  
14 services to persons, such as county health department clinics,  
15 hospitals, urgent care clinics, substance abuse treatment  
16 clinics, primary care settings, community clinics, blood banks,  
17 mobile medical clinics, and correctional health care facilities.  
18 (b) ~~(a)~~ “HIV test” means a test ordered after July 6, 1988,  
19 to determine the presence of the antibody or antigen to human  
20 immunodeficiency virus or the presence of human immunodeficiency  
21 virus infection.  
22 (c) ~~(b)~~ “HIV test result” means a laboratory report of a  
23 human immunodeficiency virus test result entered into a medical  
24 record on or after July 6, 1988, or any report or notation in a  
25 medical record of a laboratory report of a human  
26 immunodeficiency virus test. ~~As used in this section,~~ The term  
27 ~~“HIV test result”~~ does not include test results reported to a  
28 health care provider by a patient.  
29 (d) “Nonhealth care setting” means a site that conducts HIV  
30 testing for the sole purpose of identifying HIV infection but  
31 does not provide medical treatment. The term includes community-  
32 based organizations, outreach settings, county health department  
33 HIV testing programs, and mobile vans.  
34 (f) ~~(e)~~ “Significant exposure” means:  
35 1. Exposure to blood or body fluids through needlestick,  
36 instruments, or sharps;  
37 2. Exposure of mucous membranes to visible blood or body  
38 fluids, to which universal precautions apply according to the  
39 National Centers for Disease Control and Prevention, including,



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40 without limitations, the following body fluids:

41 a. Blood.

42 b. Semen.

43 c. Vaginal secretions.

44 d. Cerebrospinal ~~Cerebro-spinal~~ fluid (CSF).

45 e. Synovial fluid.

46 f. Pleural fluid.

47 g. Peritoneal fluid.

48 h. Pericardial fluid.

49 i. Amniotic fluid.

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

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

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

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

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

67 (a) Before performing an HIV test:

68 1. In a health care setting, the person to be tested must



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69 be notified orally or in writing that the HIV test is planned  
70 and that he or she has the right to decline the test. If the  
71 person to be tested declines the test, such decision shall be  
72 documented in the person's medical record. A person who has  
73 signed a general consent form for medical care is not required  
74 to sign or otherwise provide a separate consent for an HIV test  
75 during the period in which the general consent form is in effect

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

94 2. In a nonhealth care setting, a provider must obtain the  
95 informed consent of the person upon whom the HIV test is being  
96 performed. Informed consent must be preceded by an explanation  
97 of the right to confidential treatment of information



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98 identifying the subject of the test and the HIV test results as  
99 provided by law.

100

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

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

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

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

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

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

126 1. When testing for sexually transmissible diseases is



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127 required by state or federal law, or by rule including the  
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 if  
148 ~~where~~, 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



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156 the routine testing of patients for HIV infection without  
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, or during the  
182 course of providing emergency medical assistance to the  
183 individual ~~and where a blood sample is available that was taken~~  
184 ~~from that individual voluntarily by medical personnel for other~~



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

194       a. The occurrence of a significant exposure must be  
195 documented by medical personnel under the supervision of a  
196 licensed physician and recorded only in the personal record of  
197 the medical personnel ~~Prior to performance of an HIV test on a~~  
198 ~~voluntarily obtained blood sample, the individual from whom the~~  
199 ~~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~~





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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 ~~b.e.~~ 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 ~~c.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 d. If the source of the exposure is not available and will  
238 not voluntarily present to a health facility to be tested for  
239 HIV, the medical personnel or the employer of such person acting  
240 on behalf of the employee may seek a court order directing the  
241 source of the exposure to submit to HIV testing. A sworn  
242 statement by a physician licensed under chapter 458 or chapter



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243 459 that a significant exposure has occurred and that, in the  
244 physician's medical judgment, testing is medically necessary to  
245 determine the course of treatment constitutes probable cause for  
246 the issuance of an order by the court. The results of the test  
247 shall be released to the source of the exposure and to the  
248 person who experienced the exposure.

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

253 ~~f. If the source of the exposure will not voluntarily~~  
254 ~~submit to HIV testing and a blood sample is not available, the~~  
255 ~~medical personnel or the employer of such person acting on~~  
256 ~~behalf of the employee may seek a court order directing the~~  
257 ~~source of the exposure to submit to HIV testing. A sworn~~  
258 ~~statement by a physician licensed under chapter 458 or chapter~~  
259 ~~459 that a significant exposure has occurred and that, in the~~  
260 ~~physician's medical judgment, testing is medically necessary to~~  
261 ~~determine the course of treatment constitutes probable cause for~~  
262 ~~the issuance of an order by the court. The results of the test~~  
263 ~~shall be released to the source of the exposure and to the~~  
264 ~~person who experienced the exposure.~~

265 11. For the performance of an HIV test upon an individual  
266 who comes into contact with nonmedical ~~medical~~ personnel in such  
267 a way that a significant exposure has occurred ~~during the course~~  
268 ~~of employment or within the scope of practice of the medical~~  
269 ~~personnel~~ while the nonmedical ~~medical~~ personnel provides  
270 emergency medical assistance during a medical emergency  
271 ~~treatment to the individual; or notwithstanding s. 384.287, an~~



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272 ~~individual who comes into contact with nonmedical personnel in~~  
273 ~~such a way that a significant exposure has occurred while the~~  
274 ~~nonmedical personnel provides emergency medical assistance~~  
275 ~~during a medical emergency.~~ For the purposes of this  
276 subparagraph, a medical emergency means an emergency medical  
277 condition outside of a hospital or health care facility that  
278 provides physician care. The test may be performed only during  
279 the course of treatment for the medical emergency.

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

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



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301 ~~the course of treatment for the medical personnel or nonmedical~~  
302 ~~personnel.~~

303 ~~b.e.~~ Costs of any HIV test ~~performed with or without the~~  
304 ~~consent of the individual, as provided in this subparagraph,~~  
305 shall be borne by the nonmedical ~~medical~~ personnel or the  
306 employer of the ~~medical personnel or~~ nonmedical personnel.  
307 However, costs of testing or treatment not directly related to  
308 the initial HIV tests or costs of subsequent testing or  
309 treatment may not be borne by the nonmedical ~~medical~~ personnel  
310 or the employer of the ~~medical personnel or~~ nonmedical  
311 personnel.

312 ~~c.d.~~ For In order to utilize the provisions of this  
313 subparagraph to be applicable, the medical personnel or  
314 nonmedical personnel must shall be tested for HIV under pursuant  
315 ~~to~~ this section or must shall provide the results of an HIV test  
316 taken within 6 months before prior to the significant exposure  
317 if such test results are negative.

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



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330 exposure.

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

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

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

354 a. HIV testing may be conducted only after appropriate  
355 medical personnel under the supervision of a licensed physician  
356 documents in the medical record of the medical personnel or  
357 nonmedical personnel that there has been a significant exposure  
358 and that, in accordance with the written protocols based on the



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359 National Centers for Disease Control and Prevention guidelines  
360 on HIV postexposure prophylaxis and in the physician's medical  
361 judgment, the information is medically necessary to determine  
362 the course of treatment for the medical personnel or nonmedical  
363 personnel.

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

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

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

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

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

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

387 (4) HUMAN IMMUNODEFICIENCY VIRUS TESTING REQUIREMENTS;



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388 REGISTRATION WITH THE DEPARTMENT OF HEALTH; EXEMPTIONS FROM  
389 REGISTRATION.—A ~~No~~ county health department and any ~~no~~ other  
390 person in this state offering HIV tests in a nonhealth care  
391 setting may not ~~shall~~ conduct or hold themselves out to the  
392 public as conducting a testing program for acquired immune  
393 deficiency syndrome or human immunodeficiency virus status  
394 without first registering with the Department of Health,  
395 reregistering each year, complying with all other applicable  
396 provisions of state law, and meeting the following requirements:

397 (d) A program in a nonhealth care setting must meet all  
398 informed consent criteria provided in subparagraph (2)(a)2 ~~The~~  
399 ~~program must meet all the informed consent criteria contained in~~  
400 ~~subsection (2).~~

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

403 456.032 Hepatitis B or HIV carriers.—

404 (2) Any person licensed by the department and any other  
405 person employed by a health care facility who contracts a blood-  
406 borne infection shall have a rebuttable presumption that the  
407 illness was contracted in the course and scope of his or her  
408 employment, provided that the person, as soon as practicable,  
409 reports to the person's supervisor or the facility's risk  
410 manager any significant exposure, as that term is defined in s.  
411 381.004(1)(f) ~~381.004(1)(e)~~, to blood or body fluids. The  
412 employer may test the blood or body fluid to determine if it is  
413 infected with the same disease contracted by the employee. The  
414 employer may rebut the presumption by the preponderance of the  
415 evidence. Except as expressly provided in this subsection, there  
416 shall be no presumption that a blood-borne infection is a job-



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417 related injury or illness.

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

419

420 ===== T I T L E A M E N D M E N T =====

421 And the title is amended as follows:

422 Delete everything before the enacting clause

423 and insert:

424 A bill to be entitled

425 An act relating to HIV testing; amending s. 381.004,  
426 F.S.; revising and providing definitions; specifying  
427 the notification and consent procedures for performing  
428 an HIV test in a health care setting and a nonhealth  
429 care setting; amending s. 456.032, F.S.; conforming a  
430 cross-reference; providing an effective date.