

1 AN ACT concerning public health.

2 WHEREAS, The human immunodeficiency virus (HIV) and
3 acquired immunodeficiency syndrome (AIDS) are leading causes
4 of illness and death; and

5 WHEREAS, Effective September 2006, the U.S. Centers for
6 Disease Control and Prevention (CDC) revised its
7 recommendations for HIV testing due to the changing
8 demographics of the persons who have become infected since the
9 1980's, which include increasing proportions of persons less
10 than 20 years of age, women, members of racial and ethnic
11 minority populations, persons who reside outside metropolitan
12 areas, and heterosexual men and women who frequently are
13 unaware that they are at risk for HIV; and

14 WHEREAS, The CDC reports that prevention strategies that
15 incorporate universal HIV screening have been highly effective
16 and recommends screening for HIV infection for all persons 13
17 to 64 years of age; and

18 WHEREAS, It is declared to be the public policy of this
19 State that HIV screening be conducted in accordance with the
20 recommendations of the CDC and that the Department of Public
21 Health shall develop and administer compliant policies and
22 procedures for health care providers subject to State
23 regulation, as well as related public health information and

1 education programs; therefore

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The AIDS Confidentiality Act is amended by
5 changing Sections 2, 3, 4, 5, 6, 7, 8, 11, 13, 15, and 16 and by
6 adding Section 9.5 as follows:

7 (410 ILCS 305/2) (from Ch. 111 1/2, par. 7302)

8 Sec. 2. The General Assembly finds that:

9 (1) The use of tests designed to reveal a condition
10 indicative of Human Immunodeficiency Virus (HIV) infection can
11 be a valuable tool in protecting the public health.

12 (2) Despite existing laws, regulations and professional
13 standards which require or promote the informed, voluntary and
14 confidential use of tests designed to reveal HIV infection,
15 many members of the public are deterred from seeking such
16 testing because they misunderstand the nature of the test or
17 fear that test results will be disclosed without their consent.

18 (3) The public health will be served by facilitating
19 informed, voluntary and confidential use of tests designed to
20 reveal HIV infection.

21 (4) The public health will also be served by expanding the
22 availability of informed, voluntary, and confidential HIV
23 testing and making HIV testing a routine part of general

1 medical care, as recommended by the United States Centers for
2 Disease Control and Prevention.

3 (Source: P.A. 85-677; 85-679.)

4 (410 ILCS 305/3) (from Ch. 111 1/2, par. 7303)

5 Sec. 3. When used in this Act:

6 (a) "Department" means the Illinois Department of Public
7 Health.

8 (b) "AIDS" means acquired immunodeficiency syndrome.

9 (c) "HIV" means the Human Immunodeficiency Virus or any
10 other identified causative agent of AIDS.

11 (d) "Informed ~~Written informed~~ consent" means a written or
12 verbal ~~an~~ agreement ~~in writing~~ ~~executed~~ by the subject of a
13 test or the subject's legally authorized representative
14 without undue inducement or any element of force, fraud,
15 deceit, duress or other form of constraint or coercion, which
16 entails at least the following pre-test information:

17 (1) a fair explanation of the test, including its purpose,
18 potential uses, limitations and the meaning of its results; and

19 (2) a fair explanation of the procedures to be followed,
20 including the voluntary nature of the test, the right to
21 withdraw consent to the testing process at any time, the right
22 to anonymity to the extent provided by law with respect to
23 participation in the test and disclosure of test results, and
24 the right to confidential treatment of information identifying
25 the subject of the test and the results of the test, to the

1 extent provided by law.

2 Pre-test information may be provided in writing, verbally,
3 or by video, electronic, or other means. The subject must be
4 offered an opportunity to ask questions about the HIV test and
5 decline testing. Nothing in this Act shall prohibit a health
6 care provider from combining a form used to obtain informed
7 consent for HIV testing with forms used to obtain written
8 consent for general medical care or any other medical test or
9 procedure provided that the forms make it clear that the
10 subject may consent to general medical care, tests, or medical
11 procedures without being required to consent to HIV testing and
12 clearly explain how the subject may opt-out of HIV testing.

13 (e) "Health facility" means a hospital, nursing home, blood
14 bank, blood center, sperm bank, or other health care
15 institution, including any "health facility" as that term is
16 defined in the Illinois Finance Authority Act.

17 (f) "Health care provider" means any health care
18 professional, nurse, paramedic, psychologist or other person
19 providing medical, nursing, psychological, or other health
20 care services of any kind.

21 (f-5) "Health care professional" means (i) a licensed
22 physician, (ii) a physician assistant to whom the physician
23 assistant's supervising physician has delegated the provision
24 of AIDS and HIV-related health services, (iii) an advanced
25 practice registered nurse who has a written collaborative
26 agreement with a collaborating physician which authorizes the

1 provision of AIDS and HIV-related health services, (iv) a
2 licensed dentist, (v) a licensed podiatrist, or (vi) an
3 individual certified to provide HIV testing and counseling by a
4 state or local public health department.

5 (g) "Test" or "HIV test" means a test to determine the
6 presence of the antibody or antigen to HIV, or of HIV
7 infection.

8 (h) "Person" includes any natural person, partnership,
9 association, joint venture, trust, governmental entity, public
10 or private corporation, health facility or other legal entity.
11 (Source: P.A. 93-205, eff. 1-1-04; 93-482, eff. 8-8-03; revised
12 9-12-03.)

13 (410 ILCS 305/4) (from Ch. 111 1/2, par. 7304)

14 Sec. 4. No person may order an HIV test without first
15 receiving the documented ~~written~~ informed consent of the
16 subject of the test or the subject's legally authorized
17 representative. A health care facility or provider may offer
18 opt-out HIV testing where the subject or the subject's legally
19 authorized representative is informed that the subject will be
20 tested for HIV unless he or she refuses. The health care
21 facility or provider must document the provision of informed
22 consent, including pre-test information, and whether the
23 subject or the subject's legally authorized representative
24 declined the offer of HIV testing.

25 (Source: P.A. 85-1248.)

1 (410 ILCS 305/5) (from Ch. 111 1/2, par. 7305)

2 Sec. 5. No health care professional may order an HIV test
3 without making available to the person tested pre-test
4 information about the meaning of the test results, the
5 availability of additional or confirmatory testing, if
6 appropriate, and the availability of referrals for further
7 information or counseling.

8 (Source: P.A. 93-482, eff. 8-8-03.)

9 (410 ILCS 305/6) (from Ch. 111 1/2, par. 7306)

10 Sec. 6. Any individual seeking an HIV test shall have the
11 right to anonymous testing, unless identification of the test
12 subject is otherwise required. Anonymous testing shall be
13 performed after pre-test information is provided and informed
14 consent is obtained, using a coded system that does not link
15 individual identity with the request or result. A health care
16 facility or health care provider that does not provide
17 anonymous testing shall refer an individual requesting an
18 anonymous test to a site where it is available. A subject of a
19 ~~test who wishes to remain anonymous shall have the right to do~~
20 ~~so, and to provide written informed consent by using a coded~~
21 ~~system that does not link individual identity with the request~~
22 ~~or result, except when written informed consent is not required~~
23 ~~by law.~~ The Department may, if it deems necessary, promulgate
24 regulations exempting blood banks, as defined in the Illinois

1 Blood Bank Act, from the requirements of this Section.

2 (Source: P.A. 85-1248; 85-1399; 85-1440.)

3 (410 ILCS 305/7) (from Ch. 111 1/2, par. 7307)

4 Sec. 7. (a) Notwithstanding the provisions of Sections 4, 5
5 and 6 of this Act, ~~written~~ informed consent is not required for
6 a health care provider or health facility to perform a test
7 when the health care provider or health facility procures,
8 processes, distributes or uses a human body part donated for a
9 purpose specified under the Illinois Anatomical Gift Act, or
10 semen provided prior to the effective date of this Act for the
11 purpose of artificial insemination, and such a test is
12 necessary to assure medical acceptability of such gift or semen
13 for the purposes intended.

14 (b) Informed ~~Written-informed~~ consent is not required for a
15 health care provider or health facility to perform a test when
16 a health care provider or employee of a health facility, or a
17 firefighter or an EMT-A, EMT-I or EMT-P, is involved in an
18 accidental direct skin or mucous membrane contact with the
19 blood or bodily fluids of an individual which is of a nature
20 that may transmit HIV, as determined by a physician in his
21 medical judgment. Should such test prove to be positive, the
22 patient and the health care provider, health facility employee,
23 firefighter, EMT-A, EMT-I, or EMT-P shall be provided
24 appropriate counseling consistent with this Act.

25 (c) Informed ~~Written-informed~~ consent is not required for a

1 health care provider or health facility to perform a test when
2 a law enforcement officer is involved in the line of duty in a
3 direct skin or mucous membrane contact with the blood or bodily
4 fluids of an individual which is of a nature that may transmit
5 HIV, as determined by a physician in his medical judgment.
6 Should such test prove to be positive, the patient shall be
7 provided appropriate counseling consistent with this Act. For
8 purposes of this subsection (c), "law enforcement officer"
9 means any person employed by the State, a county or a
10 municipality as a policeman, peace officer, auxiliary
11 policeman, correctional officer or in some like position
12 involving the enforcement of the law and protection of the
13 public interest at the risk of that person's life.

14 (Source: P.A. 93-794, eff. 7-22-04.)

15 (410 ILCS 305/8) (from Ch. 111 1/2, par. 7308)

16 Sec. 8. Notwithstanding the provisions of Sections 4 and 5
17 of this Act, ~~written~~ informed consent, and pre-test
18 information ~~and counseling~~ are not required for the performance
19 of an HIV test: (a) for the purpose of research, if the testing
20 is performed in such a way that the identity of the test
21 subject is not known and may not be retrieved by the
22 researcher, and in such a way that the test subject is not
23 informed of the results of the testing, or (b) when in the
24 judgment of the physician, such testing is medically indicated
25 to provide appropriate diagnosis and treatment to the subject

1 of the test, provided that the subject of the test has
2 otherwise provided his or her consent to such physician for
3 medical treatment.

4 (Source: P.A. 85-1399.)

5 (410 ILCS 305/9.5 new)

6 Sec. 9.5. Delivery of test results.

7 (a) The Department shall develop rules regarding the
8 delivery of HIV test results to patients.

9 (b) The subject of the test or the subject's legally
10 authorized representative shall be notified by personal
11 contact whenever possible of the confirmed positive result of
12 an HIV test. When the subject or the subject's legally
13 authorized representative is notified of a confirmed positive
14 test result, the health care provider or professional shall
15 provide the subject or the subject's legally authorized
16 representative with a referral to counseling in connection with
17 the confirmed positive test result and a referral to an
18 appropriate medical facility for the treatment and management
19 of HIV.

20 (c) A health care provider shall not be in violation of
21 this Section when an attempt to contact the test subject or the
22 subject's legally authorized representative at the address or
23 telephone number provided by the test subject or the test
24 subject's legally authorized representative does not result in
25 contact and notification or where an attempt to deliver results

1 by personal contact has not been successful.

2 (410 ILCS 305/11) (from Ch. 111 1/2, par. 7311)

3 Sec. 11. Notwithstanding the provisions of Section 4 of
4 this Act, ~~written~~ informed consent is not required for the
5 performance of an HIV test upon a person who is specifically
6 required by law to be so tested.

7 (Source: P.A. 85-677; 85-679.)

8 (410 ILCS 305/13) (from Ch. 111 1/2, par. 7313)

9 Sec. 13. Any person aggrieved by a violation of this Act or
10 of a regulation promulgated hereunder shall have a right of
11 action in the circuit court and may recover for each violation:

12 (1) Against any person who negligently violates a provision
13 of this Act or the regulations promulgated hereunder,
14 liquidated damages of \$2,000 ~~\$1,000~~ or actual damages, whichever
15 is greater.

16 (2) Against any person who intentionally or recklessly
17 violates a provision of this Act or the regulations promulgated
18 hereunder, liquidated damages of \$10,000 ~~\$5,000~~ or actual
19 damages, whichever is greater.

20 (3) Reasonable attorney fees.

21 (4) Such other relief, including an injunction, as the
22 court may deem appropriate.

23 (Source: P.A. 85-677; 85-679.)

1 (410 ILCS 305/15) (from Ch. 111 1/2, par. 7315)

2 Sec. 15. Nothing in this Act shall be construed to impose
3 civil liability or criminal sanction for disclosure of a test
4 result in accordance with any reporting requirement of the
5 Department for a diagnosed case of HIV infection, AIDS or a
6 related condition.

7 Nothing in this Act shall be construed to impose civil
8 liability or criminal sanction for performing a test without
9 ~~written~~ informed consent pursuant to the provisions of
10 subsection (b) or (c) of Section 7 of this Act.

11 (Source: P.A. 86-887.)

12 (410 ILCS 305/16) (from Ch. 111 1/2, par. 7316)

13 Sec. 16. The Department shall promulgate rules and
14 regulations concerning implementation and enforcement of this
15 Act. The rules and regulations promulgated by the Department
16 pursuant to this Act may include procedures for taking
17 appropriate action with regard to health care facilities or
18 health care providers which violate this Act or the regulations
19 promulgated hereunder. The provisions of The Illinois
20 Administrative Procedure Act shall apply to all administrative
21 rules and procedures of the Department pursuant to this Act,
22 except that in case of conflict between The Illinois
23 Administrative Procedure Act and this Act, the provisions of
24 this Act shall control. The Department shall conduct training,
25 technical assistance, and outreach activities, as needed, to

1 implement routine HIV testing in healthcare medical settings.

2 (Source: P.A. 85-677; 85-679.)