



Rep. LaShawn K. Ford

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1 AMENDMENT TO HOUSE BILL 980

2 AMENDMENT NO. _____. Amend House Bill 980, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

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

8 (410 ILCS 305/2) (from Ch. 111 1/2, par. 7302)

9 Sec. 2. The General Assembly finds that:

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

13 (2) Despite existing laws, regulations and professional
14 standards which require or promote the informed, voluntary and
15 confidential use of tests designed to reveal HIV infection,
16 many members of the public are deterred from seeking such

1 testing because they misunderstand the nature of the test or
2 fear that test results will be disclosed without their consent.

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

6 (4) The public health will also be served by expanding the
7 availability of informed, voluntary, and confidential HIV
8 testing and making HIV testing a routine part of general
9 medical care, as recommended by the United States Centers for
10 Disease Control and Prevention.

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

12 (410 ILCS 305/3) (from Ch. 111 1/2, par. 7303)

13 Sec. 3. When used in this Act:

14 (a) "Department" means the Illinois Department of Public
15 Health.

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

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

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

25 (1) a fair explanation of the test, including its purpose,

1 potential uses, limitations and the meaning of its results; and

2 (2) a fair explanation of the procedures to be followed,
3 including the voluntary nature of the test, the right to
4 withdraw consent to the testing process at any time, the right
5 to anonymity to the extent provided by law with respect to
6 participation in the test and disclosure of test results, and
7 the right to confidential treatment of information identifying
8 the subject of the test and the results of the test, to the
9 extent provided by law.

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

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

25 (f) "Health care provider" means any health care
26 professional, nurse, paramedic, psychologist or other person

1 providing medical, nursing, psychological, or other health
2 care services of any kind.

3 (f-5) "Health care professional" means (i) a licensed
4 physician, (ii) a physician assistant to whom the physician
5 assistant's supervising physician has delegated the provision
6 of AIDS and HIV-related health services, (iii) an advanced
7 practice registered nurse who has a written collaborative
8 agreement with a collaborating physician which authorizes the
9 provision of AIDS and HIV-related health services, (iv) a
10 licensed dentist, (v) a licensed podiatrist, or (vi) an
11 individual certified to provide HIV testing and counseling by a
12 state or local public health department.

13 (g) "Test" or "HIV test" means a test to determine the
14 presence of the antibody or antigen to HIV, or of HIV
15 infection.

16 (h) "Person" includes any natural person, partnership,
17 association, joint venture, trust, governmental entity, public
18 or private corporation, health facility or other legal entity.

19 (Source: P.A. 93-205, eff. 1-1-04; 93-482, eff. 8-8-03; revised
20 9-12-03.)

21 (410 ILCS 305/4) (from Ch. 111 1/2, par. 7304)

22 Sec. 4. No person may order an HIV test without first
23 receiving the documented ~~written~~ informed consent of the
24 subject of the test or the subject's legally authorized
25 representative. A health care facility or provider may offer

1 opt-out HIV testing where the subject or the subject's legally
2 authorized representative is informed that the subject will be
3 tested for HIV unless he or she refuses. The health care
4 facility or provider must document the provision of informed
5 consent, including pre-test information, and whether the
6 subject or the subject's legally authorized representative
7 declined the offer of HIV testing.

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

9 (410 ILCS 305/5) (from Ch. 111 1/2, par. 7305)

10 Sec. 5. No health care professional may order an HIV test
11 without making available to the person tested pre-test
12 information about the meaning of the test results, the
13 availability of additional or confirmatory testing, if
14 appropriate, and the availability of referrals for further
15 information or counseling.

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

17 (410 ILCS 305/6) (from Ch. 111 1/2, par. 7306)

18 Sec. 6. Any individual seeking an HIV test shall have the
19 right to anonymous testing, unless identification of the test
20 subject is otherwise required. Anonymous testing shall be
21 performed after pre-test information is provided and informed
22 consent is obtained, using a coded system that does not link
23 individual identity with the request or result. A health care
24 facility or health care provider that does not provide

1 anonymous testing shall refer an individual requesting an
2 anonymous test to a site where it is available. ~~A subject of a~~
3 ~~test who wishes to remain anonymous shall have the right to do~~
4 ~~so, and to provide written informed consent by using a coded~~
5 ~~system that does not link individual identity with the request~~
6 ~~or result, except when written informed consent is not required~~
7 ~~by law.~~ The Department may, if it deems necessary, promulgate
8 regulations exempting blood banks, as defined in the Illinois
9 Blood Bank Act, from the requirements of this Section.

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

11 (410 ILCS 305/7) (from Ch. 111 1/2, par. 7307)

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

22 (b) Informed ~~Written informed~~ consent is not required for a
23 health care provider or health facility to perform a test when
24 a health care provider or employee of a health facility, or a
25 firefighter or an EMT-A, EMT-I or EMT-P, is involved in an

1 accidental direct skin or mucous membrane contact with the
2 blood or bodily fluids of an individual which is of a nature
3 that may transmit HIV, as determined by a physician in his
4 medical judgment. Should such test prove to be positive, the
5 patient and the health care provider, health facility employee,
6 firefighter, EMT-A, EMT-I, or EMT-P shall be provided
7 appropriate counseling consistent with this Act.

8 (c) Informed ~~written informed~~ consent is not required for a
9 health care provider or health facility to perform a test when
10 a law enforcement officer is involved in the line of duty in a
11 direct skin or mucous membrane contact with the blood or bodily
12 fluids of an individual which is of a nature that may transmit
13 HIV, as determined by a physician in his medical judgment.
14 Should such test prove to be positive, the patient shall be
15 provided appropriate counseling consistent with this Act. For
16 purposes of this subsection (c), "law enforcement officer"
17 means any person employed by the State, a county or a
18 municipality as a policeman, peace officer, auxiliary
19 policeman, correctional officer or in some like position
20 involving the enforcement of the law and protection of the
21 public interest at the risk of that person's life.

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

23 (410 ILCS 305/8) (from Ch. 111 1/2, par. 7308)

24 Sec. 8. Notwithstanding the provisions of Sections 4 and 5
25 of this Act, ~~written~~ informed consent, and pre-test information

1 ~~and counseling~~ are not required for the performance of an HIV
2 test: (a) for the purpose of research, if the testing is
3 performed in such a way that the identity of the test subject
4 is not known and may not be retrieved by the researcher, and in
5 such a way that the test subject is not informed of the results
6 of the testing, or (b) when in the judgment of the physician,
7 such testing is medically indicated to provide appropriate
8 diagnosis and treatment to the subject of the test, provided
9 that the subject of the test has otherwise provided his or her
10 consent to such physician for medical treatment.

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

12 (410 ILCS 305/9.5 new)

13 Sec. 9.5. Delivery of test results.

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

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

1 of HIV.

2 (c) A health care provider shall not be in violation of
3 this Section when an attempt to contact the test subject or the
4 subject's legally authorized representative at the address or
5 telephone number provided by the test subject or the test
6 subject's legally authorized representative does not result in
7 contact and notification or where an attempt to deliver results
8 by personal contact has not been successful.

9 (410 ILCS 305/11) (from Ch. 111 1/2, par. 7311)

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

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

15 (410 ILCS 305/13) (from Ch. 111 1/2, par. 7313)

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

19 (1) Against any person who negligently violates a provision
20 of this Act or the regulations promulgated hereunder,
21 liquidated damages of \$2,000 ~~\$1000~~ or actual damages, whichever
22 is greater.

23 (2) Against any person who intentionally or recklessly
24 violates a provision of this Act or the regulations promulgated

1 hereunder, liquidated damages of \$10,000 ~~\$5000~~ or actual
2 damages, whichever is greater.

3 (3) Reasonable attorney fees.

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

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

7 (410 ILCS 305/15) (from Ch. 111 1/2, par. 7315)

8 Sec. 15. Nothing in this Act shall be construed to impose
9 civil liability or criminal sanction for disclosure of a test
10 result in accordance with any reporting requirement of the
11 Department for a diagnosed case of HIV infection, AIDS or a
12 related condition.

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

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

18 (410 ILCS 305/16) (from Ch. 111 1/2, par. 7316)

19 Sec. 16. The Department shall promulgate rules and
20 regulations concerning implementation and enforcement of this
21 Act. The rules and regulations promulgated by the Department
22 pursuant to this Act may include procedures for taking
23 appropriate action with regard to health care facilities or
24 health care providers which violate this Act or the regulations

1 promulgated hereunder. The provisions of The Illinois
2 Administrative Procedure Act shall apply to all administrative
3 rules and procedures of the Department pursuant to this Act,
4 except that in case of conflict between The Illinois
5 Administrative Procedure Act and this Act, the provisions of
6 this Act shall control. The Department shall conduct training,
7 technical assistance, and outreach activities, as needed, to
8 implement routine HIV testing in healthcare medical settings.
9 (Source: P.A. 85-677; 85-679.)".