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H 1590 GENERAL BILL/CS/2ND ENG by Health Care; Frankel; King; Gordon and others (Similar CS/S 1378, Compare H 402, H 762, H 1270, H 1397, S 461, S 548, CS/S 707)

AIDS/Testing/Education/Reports; provides guidance to court in certain cases involving custody & support of children; excludes medical information from certain public records; requires plans for education on certain subjects in grades 6-8; provides certain requirements for instruction in acquired immune deficiency syndrome; extends time allowed for completion of AIDS education requirement by certain current licensees, etc. Amends F.S. Appropriation: \$170,518. Effective Date: 07/05/89.

03/29/89 HOUSE Prefiled

04/04/89 HOUSE Introduced. referred to Health Care; Appropriations -HJ 150

04/25/89 HOUSE On Committee agenda—Health Care, 04/27/89, 1:30 pm, 317-C

04/27/89 HOUSE Preliminary Committee Action by Health Care: Favorable as a CS

05/17/89 HOUSE Comm. Report: CS by Health Care -HJ 522; CS read first time -HJ 521; Now in Appropriations -HJ 522

05/22/89 HOUSE On Committee agenda—Appropriations, 05/23/89, 8:00 am, 21-HOB—Temporarily passed

05/24/89 HOUSE Withdrawn from Appropriations -HJ 605; Placed on Calendar

05/26/89 HOUSE Placed on Special Order Calendar

05/31/89 HOUSE Read second time -HJ 933; Amendments adopted; Read third time; CS passed as amended; YEAS 110 NAYS 1 -HJ 940

06/01/89 SENATE In Messages

06/02/89 SENATE Received -SJ 869; Substituted for CS/SB 1378; CS passed as amended; YEAS 35 NAYS 0 -SJ 891; Motion to reconsider over under Rule -SJ 896; Reconsidered; Substitute amendment adopted; CS passed as amended; YEAS 39 NAYS 0 -SJ 906

06/02/89 HOUSE In Messages; Concurred; CS passed as further amended; YEAS 115 NAYS 0 -HJ 1376

06/02/89 Ordered engrossed, then enrolled

06/20/89 Signed by Officers and presented to Governor

07/05/89 Approved by Governor; Chapter No. 89-350

NOTES: Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

STORAGE NAME: h1590-f.hc
DATE: June 7, 1989

**HOUSE OF REPRESENTATIVES
HEALTH CARE COMMITTEE
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 1590

RELATING TO: Acquired Immune Deficiency Syndrome

SPONSOR(S): Committee on Health Care and Rep. Frankel

EFFECTIVE DATE: Upon becoming law

DATE BECAME LAW: July 5, 1989

CHAPTER #: 89-350, Laws of Florida

COMPANION BILL(S): CS/SB 1378

OTHER COMMITTEES OF REFERENCE: (1) Appropriations
(2)

I. SUMMARY:

A. PRESENT SITUATION:

The disease of Acquired Immune Deficiency Syndrome (AIDS) continues to be the number one public health problem in Florida and in the nation. The physical devastation caused by AIDS is matched only by the emotional and psychological burdens placed upon those who suffer with AIDS. Some of the demographics of those affected by this disease have changed over the last few years. Researchers are now finding a significant spread of the disease in the inner cities among heterosexual persons and IV drug users. Furthermore, in some areas, there is a potentially devastating incidence of the virus being passed from pregnant women to their infants in utero. Because Florida continues to rank third behind only New York and California in the number of known AIDS cases, the disease of AIDS continues to affect the lives of all Floridians.

During the 1988 session, the Legislature passed comprehensive legislation dealing with AIDS. The bill contained provisions dealing with AIDS education, testing for HIV infection, informed consent, reporting of AIDS cases, confidentiality, and discrimination as well as other issues. In the interim period since the passage of the comprehensive AIDS legislation, a number of areas which need either clarification or further legislative attention have come to light. CS/HB 1590 is an attempt to address as many of the concerns regarding AIDS and the law as possible.

B. EFFECT OF PROPOSED CHANGES:

This bill addresses several areas which are important to provide an atmosphere in this state which allows all persons to adequately and fairly respond to the problem of AIDS. These areas include the education of licensed professionals and public school students; informed consent; testing, counseling and confidentiality; insurance; and public health and criminal justice.

The bill is an effort to continue the spirit and intent of the comprehensive AIDS legislation passed by the Legislature last session. It is important to note that the legislation passed in Florida last year is currently serving as model legislation for a number of states which are only now beginning to seriously address the issue of AIDS. The bill attempts, however, to address those problems which have arisen in the interim and those areas which were not addressed in the legislation passed last session.

C. SECTION-BY-SECTION ANALYSIS:

Section 1. This section amends s. 61.13, Florida Statutes, to provide that a court may not base a decision regarding shared parental responsibility, custody or visitation rights on the fact that a parent or grandparent is or is believed to be HIV infected.

Section 2. This section amends s. 119.07(2), Florida Statutes, 1988 Supplement, to exempt information relating to the medical condition or medical status of state employees from the provisions of the "Public Records Act."

Section 3. This section amends s. 230.2319, Florida Statutes, to require AIDS education as part of regularly scheduled comprehensive health education in grades 6 through 8 beginning with the 1990-1991 school year. The section also provides for the teaching of abstinence in conjunction with AIDS education and allows parents the option of not having their children participate in AIDS instructional activities.

Section 4. This section amends s. 233.0672, Florida Statutes, 1988 Supplement, to add certain additional elements which must be included in instruction in human sexuality including teaching abstinence as the expected conduct of school age children and the most certain way to avoid sexually transmissible diseases as well as teaching the benefits of monogamous heterosexual marriage.

Section 5. This section amends s. 381.042, Florida Statutes, 1988 Supplement, to extend the time for completing the AIDS education required for clinical lab personnel from July 1, 1989 to December 31, 1989.

Section 6. This section amends s. 381.609, Florida Statutes, 1988 Supplement, by including definitions and adding additional information which must be given to obtain informed consent from a person who is to be tested for human immunodeficiency virus

(HIV). This section conforms the requirements regarding minors and informed consent with other provisions of law. This section requires any person who orders an HIV test to schedule a return visit with the patient to disclose the test results and conduct post-test counseling.

This section clarifies the provisions of the statute relating to written releases for the disclosure of HIV test results.

This section exempts certain disclosures from the "warning provisions" of the statute and exempts facilities governed by s. 395.017, F.S., from certain confidentiality requirements as long as they have obtained written informed consent to the HIV test. This section also provides specific exceptions to the requirements of informed consent prior to testing for HIV infection. Those exceptions provided in this section are:

- When testing for sexually transmissible diseases is required by state or federal law.
- Those specific exceptions for blood, plasma, organs, skin, semen, or other human tissue pursuant to s. 381.6105, F.S.
- Testing by licensed medical personnel in the case of a bona fide medical emergency.
- Testing by licensed medial personnel for the purposes of medical diagnosis in the case of acute illness when the obtaining of informed consent would be detrimental to the patient and that fact is documented in the patient's record.
- Testing performed as part of an autopsy for which consent was obtained pursuant to s. 872.04, F.S.
- Testing of a defendant in a prosecution for sexual battery where a blood sample is taken from the defendant voluntarily or pursuant to court order for any purpose with the results of the test being disclosed to the victim only upon the victim's request.
- Testing pursuant to a court order.
- Testing for epidemiological research pursuant to federal protocols or for blinded studies.
- Testing of lawfully collected tissue for corneal removal or enucleation of the eyes pursuant to chapter 732, F.S.

This section also directs the department or its designated agents to provide anonymous testing sites throughout all areas of the state. This section provides that licensed health care facilities are subject to the penalty provisions of the statute.

Additionally, this section allows the department to collect registration fees from private entitites which register as AIDS or HIV testing sites.

Finally, this section makes it unlawful for any health care facility to require any person to submit to an HIV test as a condition of receiving treatment or services. It also provides that the department has authority to adopt rules to implement this section and provides for punishment of those who violate the section or the rules adopted by the department to enforce it.

Section 7. This section amends s. 381.6105, Florida Statutes, 1988 Supplement, to clarify provisions dealing with the donation and transfer of human tissue and the testing requirements applicable thereto. In addition, this section provides an exemption from testing in the case of semen donated by the spouse of a recipient for purposes of artificial insemination or other reproductive procedure and for donations and transfers of organs or human tissue other than blood. The section also provides for notification of HIV test results prior to confirmatory testing in the case of autologous blood donations. The section also contains an exemption to informed consent in the case of certain unrevoked anatomical gifts.

Section 8. This section amends s. 384.25, Florida Statutes, 1988 Supplement, to authorize the department to allow county public health units to accept reports of physician diagnosed cases of HIV infection with the consent of the patient for the purposes of partner notification and contact tracing. The department is further directed to develop rules and protocols for the implementation of this reporting program. The program may not be initiated until federal funds to support the program are available. The HIV status of a public school student or an employee of a school board may be reported to a school superintendent with the consent of the patient as well.

Section 9. This section amends s. 384.27(3), Florida Statutes, 1988 Supplement, to change the word "warrant" to the word "order" to effect a necessary technical change.

Section 10. This section amends s. 455.2226, F.S., 1988 Supplement, to extend the deadline for completion of AIDS education requirements for occupational therapists from July 1, 1989 to December 31, 1989. Further, the section requires physical therapists to complete an educational course on AIDS by December 31, 1990.

Section 11. This section creates s. 455.2228, Florida Statutes, to require persons licensed as barbers, cosmetologists, and masseurs to complete a course of education on AIDS or face disciplinary action. The educational requirements are a condition of licensure for these professionals.

Section 12. This section amends s. 455.2416, F.S., to provide immunity for health care providers for disclosure or non-disclosure of information relating to HIV infection to sexual partners or needle-sharing partners under certain circumstances.

The section provides that disclosure to a sexual partner or needle-sharing partner can only be made after notice to the patient and pursuant to department protocol.

Section 13. This section amends s. 627.429(1), F.S., to change the word "indemnity" to the word "underwriting" to effect a necessary technical change.

Section 14. This section amends s. 760.50, Florida Statutes, 1988 Supplement, to provide additional legislative intent and clarifies existing law regarding discrimination and HIV infection. The section requires every employer who provides or administers health insurance benefits or life insurance benefits to develop procedures to maintain the confidentiality of all records and information in its possession relating to the medical status or condition of any person covered by the benefits of that insurance. An employer is liable in damages to any person harmed by the employer's failure to develop such a policy. The section also prohibits discrimination against any person based on the "perceived results" of an HIV test or the fact that a person has taken or is believed to have taken an HIV test.

Section 15. This section requires the Department of Health and Rehabilitative Services to report to the Legislature on the impact and effect of HIV infection on pregnant women and infants.

Section 16. This section requires the Department of Education, the Department of Health and Rehabilitative Services, and the Department of Professional Regulation to jointly oversee the quality of AIDS education projects being administered in the state and to enter into an interagency agreement. Also, this section requires a report to the Legislature on the status of AIDS education by March 1, 1990.

Section 17. This section requires the Department of Health and Rehabilitative Services and the Department of Insurance to establish an interagency agreement to measure the impact of AIDS on the availability of health and life insurance to persons with AIDS and to look for ways in which the state may encourage insurance companies to be responsive to the needs of persons with AIDS. A report is due to the Legislature on this issue by March 1, 1990.

Section 18. This section provides for the Department of Health and Rehabilitative Services and the Department of Education to provide a study on the prevalence of HIV infection among the adolescent population and to report to the Legislature by March 1, 1990.

Section 19. This section requires the State Health Office, the State Board of Funeral Directors and Embalmers, and the Florida Funeral Directors Association to jointly prepare and submit a report to the legislature regarding the need, advisability, and possible methodology for notifying persons who have contact with deceased persons when a deceased person has a communicable disease.

Section 20. This section repeals s. 455.2227, Florida Statutes, 1988 Supplement, which contains requirements that instructional materials on HIV be developed and distributed to barbers, cosmetologists, and masserus.

Section 21. This section provides an appropriation of \$170,518 from the Professional Regulation Trust Fund to the Department of Professional Regulation to implement the AIDS education requirements applicable to barbers, cosmetologists, and masseurs.

Section 22. This section provides that the act shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

The exact cost of implementing the AIDS education requirements for grades 6 through 8 is unknown at the present time. The cost would vary depending on whether existing teachers were trained to provide this education or whether it would be necessary to hire new personnel to teach in this area.

There will be no cost incurred to conduct the studies required of the Departments of Education, HRS and Insurance mandated by Sections 15, 16, 17 and 18 of the bill as those studies are to be accomplished by using existing personnel.

The cost of documenting and verifying the AIDS education requirements for barbers, cosmetologists, and masseurs is estimated to be \$170,518.

2. Recurring or Annualized Continuation Effects:

The cost of continuing the AIDS education required for grades 6 through 8 is unknown at this time for the reasons stated in II.A. above.

3. Long Run Effects Other Than Normal Growth:

None.

4. Appropriations Consequences:

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None.

2. Recurring or Annualized Continuation Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

There may result in some minimal costs to those professionals required to obtain AIDS education pursuant to section 11 of the bill.

2. Direct Private Sector Benefits:

The provisions of this bill which exempt hospitals from the warning requirements of the statute's confidentiality provisions should result in substantial cost savings to those hospitals.

3. Effects on Competition, Private Enterprise, and Employment Markets:

None.

D. FISCAL COMMENTS:

III. LONG RANGE CONSEQUENCES:

This bill will fill in gaps which currently exist in Florida AIDS legislation as well as addressing the specific concerns and difficulties encountered by various segments of the population in their attempts to comply with the requirements of the law. This bill is consistent with the goals stated in the State Comprehensive Plan in s. 187.201(6), F.S.

IV. COMMENTS:

This bill is consistent with the Mission Statement of the Committee on Health Care in that it promotes access to necessary health care services. Furthermore, the bill is consistent with the Policy Statement of the Speaker's Issues Conference in that the bill attempts to find mechanisms for increasing the availability of affordable health insurance.

STORAGE NAME: h1590-f.hc

DATE: June 7, 1989

PAGE: 8

History

4/4/89 H Introduced, referred to Health Care; Appropriations
5/17/89 H Reported favorable by Health Care as a CS
5/24/89 H Withdrawn from Appropriations
5/31/89 H Passed as amended; 110 yeas, 1 nay
6/1/89 S In messages
6/2/89 S Received; Substituted for CS/SB 1378; CS passed as
amended; 35 yeas, 0 nays; Reconsidered, CS passed as
amended; 39 yeas, 0 nays
6/2/89 H In messages; CS passed as further amended; 115 yeas,
0 nays

V. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:

Teresa Clemmons Nugent
Teresa Clemmons Nugent

Staff Director:

Michael P. Hansen
Mike Hansen

SECOND COMMITTEE OF REFERENCE:

Prepared by:

Staff Director:

APPROPRIATIONS:

Prepared by:

Staff Director:

REVISED: _____

BILL NO. CS/SBs 1378 & 461DATE: May 10, 1989Page 1

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Williams</u>	<u>Wilson</u>	1. <u>HC</u>	<u>Fav/CS</u>
2. _____	_____	2. <u>EPUR</u>	<u>Withdrawn</u>
3. _____	_____	3. <u>AP</u>	<u>Withdrawn</u>
4. _____	_____	4. _____	_____

SUBJECT: AIDS Testing/Reports

BILL NO. AND SPONSOR: CS for SBs 1378 & 461 by Committee on Health Care and Senators Malchon and Girardeau

I. SUMMARY:

A. Present Situation:

Acquired Immune Deficiency Syndrome (AIDS) is a physical disorder that results in the loss of cell-mediated immunity in affected persons. It is caused by a retrovirus known as human immunodeficiency virus (HIV). The virus attacks the body's immune system, leaving it vulnerable to a variety of life-threatening infections and tumors. This retrovirus, HIV, is capable of inducing asymptomatic infection, a lesser but severe illness known as AIDS-related complex (ARC), and the full-blown syndrome which meets the Centers for Disease Control's case criteria for AIDS. Recent studies have shown an average incubation period of 7 to 8 years from AIDS virus infection to development of clinical AIDS.

The first case of AIDS was diagnosed in the U.S. in 1981. As of April 1, 1989, 90,990 cases have been reported nationwide. Florida ranks third behind New York and California in the number of AIDS cases. In Florida, the cumulative number of reported cases of AIDS is 7,575 as of May 1, 1989. Of these total reported cases, 4,439, or 59 percent, have died. The number of cases of AIDS doubles approximately every 12 months. As a result, it is estimated that in 1991, Florida will have a cumulative total of 32,000 reported cases of AIDS.

The most widely used blood tests to detect HIV infection do not detect the virus particles themselves. Rather, the tests identify proteins called antibodies, which are produced by the body's immune system in response to infection with the virus. Those who test positive for HIV antibodies are considered to be infected with the virus and are capable of transmitting it to others for as long as they live. Possible modes of transmission of the virus are by sexual activity, by direct exposure to blood, and from an infected mother to her offspring. Public fear of contagion from casual contact is not supported by any scientific evidence. To check a person for HIV antibodies, a screening blood test known as the ELISA is performed. If the test result is negative, no further tests are done. But if the result is positive, it should be confirmed by additional tests.

The HIV test indicates a person's HIV infection status only for the day on which the blood is drawn and the test may read negative during an incubation period of 2 weeks to 6 months after exposure to the virus, before antibody levels are detectable by the test.

The Department of Health and Rehabilitative Services (HRS) has established anonymous and confidential HIV antibody counseling and testing sites to provide services on a statewide basis. The services are provided with voluntary, informed consent of

the patient. The HIV antibody test results are confidential under section 384.29, F.S., and may not be released without the written consent of the patient. During calendar year 1988, 14,380 persons were tested in anonymous test sites. Of that number, 1,226, or 8.5 percent, were positive. At confidential test sites 66,439 persons were tested of which 3,320, or 5 percent were positive. Thus, a total of 80,819 persons were tested in 1988, of which 4,546, or 5.6 percent, were positive.

The 1988 Legislature enacted comprehensive legislation dealing with AIDS. That legislation, chapter 88-380, Laws of Florida, serves as model legislation for a number of states which are only now beginning to seriously address the issue of AIDS. The 1988 omnibus bill addressed the following broad areas:

- Education of health care professionals
- Education programs and requirements
- Counseling, testing, and confidentiality requirements
- Nondiscrimination
- Treatment, research, and planning
- Public health criminal justice measures
- Insurance and health maintenance organizations

On February 8, 1989, the Senate Committee on Health Care solicited input on those issues from the 1988 AIDS legislation which should be further addressed by the 1989 Legislature. The following items were among the issues raised:

- Removing the parental consent requirement for HIV testing of minors
- Exceptions to informed consent for testing of acutely ill or emergency patients
- Reporting positive HIV test results to county public health units
- Testing requirements for organs and tissues for transplant
- Confidentiality of medical records
- Education requirements for various professions

Pursuant to Executive Order Number 88-22, the 1988 report of the Governor's Task Force on AIDS was transmitted to the Governor, the Speaker of the House of Representatives, and the President of the Senate on March 22, 1989. The report included 39 specific recommendations in the areas of AIDS surveillance, patient care, HIV education and prevention, counseling, testing, partner notification, and legislation. The recommendations of the task force evolved from five public meetings and lengthy discussions with State Health Office staff between June and December 1988. One of the legislative recommendations was to require, by rulemaking authority, the reporting of HIV infections to county public health units, but only when resources become available in the form of state or federal funding to assist private physicians in reporting and to provide partner notification services to HIV infected persons. This reporting would in no way impact on the existing 25 anonymous counseling and testing sites in 19 counties.

Section 17 of chapter 88-380, Laws of Florida, required HRS to appoint a 9-member study committee to examine the need for local school officials to be informed of the HIV infection status of students and school personnel. The study group

unanimously recommended that "the HIV infection status of students and school personnel remain strictly confidential. Therefore, local school authorities do not need to know HIV infection status."

Section 119.07, Florida Statutes, 1988 Supplement, governs the inspection of public records and provides for a number of exemptions from public inspection. However, state employee personnel files, including any medical information, are subject to public disclosure.

Section 230.2319, Florida Statutes, 1988 Supplement, establishes the Florida Progress in Middle Childhood Education Program (PRIME), to assure certain basic education elements for students. Subsection (5) of this section establishes general requirements for grades 6, 7, and 8.

Section 381.042, Florida Statutes, 1988 Supplement, requires completion and certification of completion of an AIDS education course by July 1, 1989, and requires such a course as a condition of initial licensure as of July 1, 1989, by the following practitioners licensed by the Department of Health and Rehabilitative Services:

Chapter 401	Emergency medical services
Chapter 467	Midwives
Chapter 468, Part IV	Radiology technologists
Chapter 483	Health testing services (laboratories)

This section shall be repealed on July 1, 1990.

Section 381.609, Florida Statutes, 1988 Supplement, provides the standards and guidelines for HIV testing. Specifically, subsection (2) of this section requires informed consent and counseling prior to testing, specific counseling prior to sharing test results, specific confidentiality requirements, and specific exceptions to these requirements. None of these exceptions relate specifically to the area of adoption and foster care.

Subsection (3) requires HRS to establish a public health unit network of voluntary HIV testing programs. Subsection (5) provides penalties for health care providers who violate the provisions of this section.

Section 381.6105, Florida Statutes, 1988 Supplement, establishes testing, counseling, and confidentiality requirements for blood banks and other facilities which transfer human tissue.

Section 384.25, Florida Statutes, 1988 Supplement, relating to reporting of sexually transmissible diseases (STDs), requires hospitals, physicians, and laboratories to report to HRS the common STDs, as well as AIDS and ARC, and authorizes reporting of cases of HIV infection without names or name identifiers effective July 1, 1989.

Section 384.27, Florida Statutes, 1988 Supplement, relating to physical examination and treatment of STDs, requires a burden of proof of clear and convincing evidence, certain due process safeguards, and a court order for examination and treatment for those who do not willfully seek or accept treatment.

Section 455.2226, Florida Statutes, 1988 Supplement, requires AIDS education instruction for a number of professional groups. Subsection (1) requires completion and certification of

completion of an AIDS education course by July 1, 1989, for the following practitioners:

Chapter 463	Optometry
Chapter 464	Nursing
Chapter 465	Pharmacy
Chapter 468, Parts II, III, and V	Nursing home administrators, occupational and respiratory therapists
Chapter 490	Psychological services
Chapter 491	Clinical counseling and psychotherapy services

Subsection (2) requires completion and certification of completion of an AIDS education course by December 31, 1989, by the following practitioners:

Chapter 457	Acupuncture
Chapter 458	Medical Practice
Chapter 459	Osteopathy
Chapter 460	Chiropractic
Chapter 461	Podiatry
Chapter 466	Dental
Chapter 470	Funeral Directors, etc.

Such a course is a condition of initial licensure for all the above practitioners as of July 1, 1989. This section shall be repealed July 1, 1990.

Section 455.2416, Florida Statutes, 1988 Supplement, exempts from civil or criminal liability a health care professional regulated through the Department of Professional Regulations' division of medical quality assurance who notifies or fails to notify the spouse of a known HIV infected individual when the infected individual refuses to notify the spouse or to curtail activity which puts the spouse at risk of HIV infection.

Section 627.429, Florida Statutes, 1988 Supplement, provides guidelines for HIV testing for insurance purposes. Subsection (1) specifies that the purpose of the section is to prohibit unfair practices in the indemnity of life and health insurance.

Section 760.50, Florida Statutes, 1988 Supplement, prohibits discrimination based on AIDS, ARC, or HIV infection. Subsection (3) prohibits employment discrimination.

B. Effect of Proposed Changes:

Committee Substitute for Senate Bills 1378 & 461 is a followup to the Omnibus AIDS bill of 1988. The bill:

- Exempts from the "Public Records Act" information relating to the medical condition or medical status of a state employee.
- Requires the development of plans for the education of middle school students on substance abuse, AIDS and other communicable diseases, and basic health.
- Extends by 6 months the time frame during which laboratory personnel must receive AIDS education.
- Authorizes the sharing of HIV test results in the foster care and adoption setting.

- Prohibits consent to an HIV test as a requirement for admission to a health care facility.
- Authorizes testing for HIV infection without informed consent in a bona fide medical emergency or acute care situation when the person to be tested is unable to grant or withhold consent.
- Authorizes HIV testing without informed consent when the donor of an unrevoked anatomical gift is deceased or incompetent.
- Provides for giving of informed consent to HIV tests by minors when they are otherwise authorized to give consent.
- Authorizes blood banks to contact the treating physician of those whose autologously donated blood has evidence of the HIV virus based on preliminary testing when such results may be necessary for the diagnosis, treatment, or care of the donor.
- Authorizes disclosure of HIV tests results which are contained in the medical records of a licensed hospital in specific circumstances.
- Authorizes county public health units to accept reports of HIV infection for certain purposes and authorizes HRS to contract for the provision of anonymous testing.
- Requires physical therapists to complete an educational course on HIV and AIDS.
- Provides that licensed medical practitioners are not civilly or criminally liable for disclosure of positive HIV test results to county public health units and to the sexual partner or needle-sharing partner of certain HIV infected persons.
- Prohibits employment discrimination against health care workers who provide patient care to persons with HIV infection.

Sectional Analysis

Section 1. Amends subsection (3) of section 119.07, Florida Statutes, 1988 Supplement, to exempt from the "Public Records Act" information relating to the medical condition or medical status of a state employee.

Section 2. Amends subsection (5) of section 230.2319, Florida Statutes, 1988 Supplement, to require the development of plans for the education of middle school students on substance abuse, AIDS and other communicable diseases, growth and development, and personal health and hygiene.

Section 3. Amends subsection (1) of section 381.042, Florida Statutes, 1988 Supplement, to extend the AIDS, HIV education deadline by six months, from July 1, 1989, to December 1, 1989, for laboratory professionals licensed by HRS.

Section 4. Amends subsections (2), (3), and (5) of section 381.609, Florida Statutes, 1988 Supplement, and adds a new subsection (9) to:

- Provide an additional exception to the informed consent requirement for HIV testing in those situations where a bona fide medical emergency exists in which HIV test results are necessary for medical diagnostic purposes to provide appropriate emergency care or treatment, or for medical diagnosis and treatment of acute illness when the

subject of the test is unable to grant or withhold consent. Requires notification of the person tested or his legal representative as soon as possible after the emergency and documentation in the medical record as to why consent was not obtained and the reasons for immediate testing.

- Require exceptions to informed consent specified elsewhere in law to be incorporated into rule of HRS.
- Authorize minors who can provide consent for STD testing and treatment pursuant to s. 384.30, F.S., to provide their own consent for HIV testing.
- Authorize the operator of child placing agencies and operators of their foster homes licensed pursuant to section 409.175, Florida Statutes, operators of residential child caring agencies licensed pursuant to section 409.175, Florida Statutes, which have care or custody of the subject of the test, and prospective adoptive parents of the subject of a test to know the HIV test results of a child to be adopted or cared for.
- Revise the confidentiality standards of hospital medical records containing HIV test results such that these records are no longer "superconfidential." Makes available to physicians the HIV status information contained in the hospital medical record if the physician requests such information in writing, is a provider of care to the patient in question, and has or is likely to have a significant exposure to the patient's blood or body fluids as a result of providing care.
- Authorize HRS to provide anonymous HIV testing through contract agencies in order to provide test sites throughout the state.
- Provide penalties for facilities which violate the testing provisions of section 381.609, Florida Statutes.
- Prohibit any health care facility or provider from requiring any person to submit to an HIV test as a condition of receiving treatment or services. Provide for rulemaking authority within HRS and the Department of Professional Regulation. Provide for penalty action against violators.

Section 5. Amends subsections (1) and (2) of section 381.6105, Florida Statutes, 1988 Supplement, to:

- Specifically authorize minors to provide informed consent to HIV testing as part of their consent for blood donation pursuant to section 743.06, Florida Statutes.
- Authorize HIV testing of the unrevoked anatomical gift of a deceased or incompetent person without informed consent.
- Authorize blood banks to contact the treating physician of those whose autologously donated blood has evidence of the HIV virus based on preliminary testing when such results may be necessary for the diagnosis, treatment, or care of the donor.

Section 6. Amends section 384.25, Florida Statutes, 1988 Supplement, relating to reporting requirements, to authorize county public health units to accept reports of HIV infection by October 1, 1989. However, certain caveats apply:

- Only reports of HIV infection detected after the effective date of the HRS rule implementing this specific subsection will be accepted.

- Reporting may not in any way impact anonymous and confidential HIV programs already in place in county public health units or university based medical research protocols which include partner notification and contact investigation as determined by HRS.
- HIV infection reports shall include names and name identifiers, shall be maintained in the form of individual client records, and shall not be maintained in the form of a roster of names.
- Such reports shall be used by county public health units solely for the purposes of partner notification and contact investigation.
- Periodic reports of demographic information without any identifying information will be required from county public health units to the State Health Officer or his designee.
- A specific HRS rule must be developed to govern this reporting.

Section 7. Amends subsection (3) of section 384.27, Florida Statutes, 1988 Supplement, to replace the word "warrant" with the word "order." This is an editorial oversight from the 1988 legislation.

Section 8. Amends section 455.2226, Florida Statutes, 1988 Supplement, to require that physical therapists, licensed pursuant to chapter 486, complete a HIV, AIDS education course by December 31, 1990. Identical requirements were imposed for a large number of practitioners in 1988. This is an editorial oversight from the 1988 legislation.

Section 9. Amends section 455.2416, Florida Statutes, 1988 Supplement, relating to immunity from criminal or civil liability for disclosure of otherwise confidential HIV infection information by medical practitioners, to authorize reporting to county public health units, or the sexual partner or needle-sharing partner under certain circumstances. Current statutory language limits such reporting only to spouses of patients.

Section 10. Amends subsection (1) of section 627.429, Florida Statutes, 1988 Supplement, to replace the word "indemnity" with the word "underwriting." This is an editorial oversight from the 1988 legislation.

Section 11. Amends subsection (3) of section 760.50, Florida Statutes, 1988 Supplement, relating to employment discrimination, to prohibit discrimination against health care workers who deliver care to HIV infected persons.

Section 12. Indicates that the bill shall take effect upon becoming law.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

The Department of Health and Rehabilitative Services has indicated that even though this bill authorizes HIV reporting by rule, such a rule will not be promulgated until adequate funds are made available from state or federal funds to hire adequate staff to carry out the necessary partner notification and contact investigation.

III. COMMENTS:

It has been reported that there are health care facilities in the state which are currently requiring patient consent to HIV testing as a precondition of admission for care and treatment. While this technically is not a violation of the letter of section 381.609, Florida Statutes, 1988 Supplement, it is certainly a violation of the spirit of the 1988 omnibus AIDS law.

The following organizations and agencies have reviewed medical, scientific, and public health facts related to HIV infected students attending school. Each group has consistently, over a several year period, recommended that HIV infected children be mainstreamed into schools. These agencies and organizations include:

Centers for Disease Control
Florida Governor's Task Force on AIDS
HRS State Health Office
Florida Department of Education

IV. AMENDMENTS:

None.