



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB5281

Introduced 2/8/2012, by Rep. Donald L. Moffitt

SYNOPSIS AS INTRODUCED:

410 ILCS 305/3	from Ch. 111 1/2, par. 7303
410 ILCS 305/5.5	
410 ILCS 305/7	from Ch. 111 1/2, par. 7307
410 ILCS 305/9	from Ch. 111 1/2, par. 7309
410 ILCS 315/1	from Ch. 111 1/2, par. 22.11
410 ILCS 315/2a rep.	

Amends the AIDS Confidentiality Act. Makes changes to the definition of "health care facility" (now "health facility") and adds definitions for "emergency responder" and "police officer". Provides that the Department of Public Health shall adopt rules to allow for the implementation of HIV (now HIV/AIDS) rapid testing. Makes changes to the provisions concerning informed consent and exceptions to the prohibition against disclosure of the identity of any person upon whom a test is performed or the results of such a test in a manner that permits identification of the subject of the test. Amends the Communicable Disease Prevention Act to list certain diseases in a provision concerning communicable diseases and repeal a provision concerning giving notice of the identity of a child of school age who is reported as having acquired AIDS or HIV to the principal of the school in which the child is enrolled.

LRB097 17805 RPM 63021 b

1 AN ACT concerning public health.

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 3, 5.5, 7, and 9 as follows:

6 (410 ILCS 305/3) (from Ch. 111 1/2, par. 7303)

7 Sec. 3. When used in this Act:

8 (a) "Department" means the Illinois Department of Public
9 Health.

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

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

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

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

21 (2) a fair explanation of the procedures to be followed,
22 including the voluntary nature of the test, the right to
23 withdraw consent to the testing process at any time, the right

1 to anonymity to the extent provided by law with respect to
2 participation in the test and disclosure of test results, and
3 the right to confidential treatment of information identifying
4 the subject of the test and the results of the test, to the
5 extent provided by law.

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

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

21 (f) "Health care provider" means any health care
22 professional, nurse, ~~paramedic~~, psychologist, or other person
23 providing medical, nursing, psychological, or other health
24 care services of any kind.

25 (f-5) "Health care professional" means (i) a licensed
26 physician, (ii) a physician assistant to whom the physician

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

9 (f-10) "Emergency responder" means an emergency medical
10 responder, an emergency medical technician, an advanced
11 emergency medical technician, a paramedic, a firefighter, a
12 prehospital registered nurse, a member of the Medical Reserve
13 Corps, or a volunteer.

14 (f-15) "Police officer" means any person employed by the
15 State, a county, or a municipality as a policeman, peace
16 officer, auxiliary police officer, correctional officer, or in
17 some like position involving the enforcement of the law and
18 protection of the public interest at the risk of that person's
19 life.

20 (g) "Test" or "HIV test" means a test to determine the
21 presence of the antibody or antigen to HIV, or of HIV
22 infection.

23 (h) "Person" includes any natural person, partnership,
24 association, joint venture, trust, governmental entity, public
25 or private corporation, health care facility or other legal
26 entity.

1 (Source: P.A. 95-7, eff. 6-1-08; 95-331, eff. 8-21-07.)

2 (410 ILCS 305/5.5)

3 Sec. 5.5. Rapid testing. The Department shall adopt rules
4 to allow for the implementation of HIV/~~AIDS~~ rapid testing. The
5 rules must include, but need not be limited to, standards for
6 ordering and administration of testing and counseling and
7 dissemination of test results.

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

9 (410 ILCS 305/7) (from Ch. 111 1/2, par. 7307)

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

20 (b) Informed consent is not required for a health care
21 provider or health care facility to perform a test when a
22 health care provider, ~~or~~ employee of a health care facility, or
23 emergency responder ~~a firefighter or an EMT-A, EMT-I or EMT-P,~~
24 is involved in an accidental direct skin or mucous membrane

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

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

22 (Source: P.A. 95-7, eff. 6-1-08.)

23 (410 ILCS 305/9) (from Ch. 111 1/2, par. 7309)

24 Sec. 9. No person may disclose or be compelled to disclose
25 the identity of any person upon whom a test is performed, or

1 the results of such a test in a manner which permits
2 identification of the subject of the test, except to the
3 following persons:

4 (a) The subject of the test or the subject's legally
5 authorized representative. A physician may notify the spouse of
6 the test subject, if the test result is positive and has been
7 confirmed pursuant to rules adopted by the Department, provided
8 that the physician has first sought unsuccessfully to persuade
9 the patient to notify the spouse or that, a reasonable time
10 after the patient has agreed to make the notification, the
11 physician has reason to believe that the patient has not
12 provided the notification. This paragraph shall not create a
13 duty or obligation under which a physician must notify the
14 spouse of the test results, nor shall such duty or obligation
15 be implied. No civil liability or criminal sanction under this
16 Act shall be imposed for any disclosure or non-disclosure of a
17 test result to a spouse by a physician acting in good faith
18 under this paragraph. For the purpose of any proceedings, civil
19 or criminal, the good faith of any physician acting under this
20 paragraph shall be presumed.

21 (b) Any person designated in a legally effective release of
22 the test results executed by the subject of the test or the
23 subject's legally authorized representative.

24 (c) An authorized agent or employee of a health care
25 facility or health care provider if the health care facility or
26 health care provider itself is authorized to obtain the test

1 results, the agent or employee provides patient care or handles
2 or processes specimens of body fluids or tissues, and the agent
3 or employee has a need to know such information.

4 (d) The Department and local health authorities serving a
5 population of over 1,000,000 residents or other local health
6 authorities as designated by the Department, in accordance with
7 rules for reporting and controlling the spread of disease, as
8 otherwise provided by State law. The Department, local health
9 authorities, and authorized representatives shall not disclose
10 information and records held by them relating to known or
11 suspected cases of AIDS or HIV infection, publicly or in any
12 action of any kind in any court or before any tribunal, board,
13 or agency. AIDS and HIV infection data shall be protected from
14 disclosure in accordance with the provisions of Sections 8-2101
15 through 8-2105 of the Code of Civil Procedure.

16 (e) A health care facility or health care provider which
17 procures, processes, distributes or uses: (i) a human body part
18 from a deceased person with respect to medical information
19 regarding that person; or (ii) semen provided prior to the
20 effective date of this Act for the purpose of artificial
21 insemination.

22 (f) Health care facility staff committees for the purposes
23 of conducting program monitoring, program evaluation or
24 service reviews.

25 (g) (Blank).

26 (h) Any health care provider, ~~or~~ employee of a health care

1 facility, or emergency responder who sustains a confirmed
2 exposure involving the transmission of ~~and any firefighter or~~
3 ~~EMT-A, EMT-P, or EMT-I, involved in an accidental direct skin~~
4 ~~or mucous membrane contact with the blood or bodily fluids from~~
5 ~~of an individual capable of transmitting which is of a nature~~
6 ~~that may transmit HIV, as determined by the designated officer~~
7 or a physician in his medical judgment.

8 (i) (Blank). ~~Any law enforcement officer, as defined in~~
9 ~~subsection (c) of Section 7, involved in the line of duty in a~~
10 ~~direct skin or mucous membrane contact with the blood or bodily~~
11 ~~fluids of an individual which is of a nature that may transmit~~
12 ~~HIV, as determined by a physician in his medical judgment.~~

13 (j) A temporary caretaker of a child taken into temporary
14 protective custody by the Department of Children and Family
15 Services pursuant to Section 5 of the Abused and Neglected
16 Child Reporting Act, as now or hereafter amended.

17 (k) In the case of a minor under 18 years of age whose test
18 result is positive and has been confirmed pursuant to rules
19 adopted by the Department, the health care provider who ordered
20 the test shall make a reasonable effort to notify the minor's
21 parent or legal guardian if, in the professional judgment of
22 the health care provider, notification would be in the best
23 interest of the child and the health care provider has first
24 sought unsuccessfully to persuade the minor to notify the
25 parent or legal guardian or a reasonable time after the minor
26 has agreed to notify the parent or legal guardian, the health

1 care provider has reason to believe that the minor has not made
2 the notification. This subsection shall not create a duty or
3 obligation under which a health care provider must notify the
4 minor's parent or legal guardian of the test results, nor shall
5 a duty or obligation be implied. No civil liability or criminal
6 sanction under this Act shall be imposed for any notification
7 or non-notification of a minor's test result by a health care
8 provider acting in good faith under this subsection. For the
9 purpose of any proceeding, civil or criminal, the good faith of
10 any health care provider acting under this subsection shall be
11 presumed.

12 (Source: P.A. 96-328, eff. 8-11-09.)

13 Section 10. The Communicable Disease Prevention Act is
14 amended by changing Section 1 as follows:

15 (410 ILCS 315/1) (from Ch. 111 1/2, par. 22.11)

16 Sec. 1. Certain communicable diseases, including, but not
17 limited to, ~~such as~~ measles, poliomyelitis, invasive
18 pneumococcal disease, hepatitis B, hepatitis C, anthrax
19 cutaneous, rabies, HIV, vaccinia virus, viral hemorrhagic
20 fevers (Marburg, Ebola, Crimean-Congo), measles (rubeola),
21 tuberculosis, varicella (chickenpox), diphtheria, mumps, novel
22 influenza viruses, pertussis, neisseria meningitis, plague
23 (pneumonic), rubella, SARS-CoV, and tetanus, may and do result
24 in serious physical and mental disability including an

1 intellectual disability, permanent paralysis, encephalitis,
2 convulsions, pneumonia, and not infrequently, death.

3 Most of these diseases attack young children, and if they
4 have not been immunized, may spread to other susceptible
5 children and possibly, adults, thus, posing serious threats to
6 the health of the community. Effective, safe and widely used
7 vaccines and immunization procedures have been developed and
8 are available to prevent these diseases and to limit their
9 spread. Even though such immunization procedures are
10 available, many children fail to receive this protection either
11 through parental oversight, lack of concern, knowledge or
12 interest, or lack of available facilities or funds. The
13 existence of susceptible children in the community constitutes
14 a health hazard to the individual and to the public at large by
15 serving as a focus for the spread of these communicable
16 diseases.

17 It is declared to be the public policy of this State that
18 all children shall be protected, as soon after birth as
19 medically indicated, by the appropriate vaccines and
20 immunizing procedures to prevent communicable diseases which
21 are or which may in the future become preventable by
22 immunization.

23 (Source: P.A. 97-227, eff. 1-1-12.)

24 (410 ILCS 315/2a rep.)

25 Section 15. The Communicable Disease Prevention Act is

1 amended by repealing Section 2a.