

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 260 Session of 2011

INTRODUCED BY ERICKSON, RAFFERTY, M. WHITE, WAUGH, VANCE, COSTA, BOSCOLA, EARLL AND GREENLEAF, JANUARY 26, 2011

AS REPORTED FROM COMMITTEE ON HUMAN SERVICES, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 21, 2011

AN ACT

1 Amending the act of November 29, 1990 (P.L.585, No.148),
2 entitled "An act providing for confidentiality of certain
3 records; providing for the authorized sharing of certain
4 information; providing for written consent prior to an HIV-
5 related test, with certain exceptions; providing for civil
6 immunity for certain licensed physicians; providing for
7 protective procedures and equipment; and creating a civil
8 cause of action," further providing for legislative intent,
9 for consent to HIV-related tests and for counseling.

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

12 Section 1. Sections 2(c), 5(a) and (b) and 6(b)(1) of the
13 act of November 29, 1990 (P.L.585, No.148), known as the
14 Confidentiality of HIV Related Information Act, are amended to
15 read:

16 SECTION 1. SECTION 2(C) OF THE ACT OF NOVEMBER 29, 1990
17 (P.L.585, NO.148), KNOWN AS THE CONFIDENTIALITY OF HIV-RELATED
18 INFORMATION ACT, IS AMENDED TO READ:

19 Section 2. Legislative intent.

20 * * *

1 (c) Intent.--It is the intent of the General Assembly to
2 promote confidential testing on an informed and voluntary basis
3 in order to encourage those most in need to obtain testing and
4 appropriate counseling[.] and to better serve the public health
5 by making HIV testing a routine part of general medical care, as
6 recommended by the Centers for Disease Control and Prevention.

7 * * *

8 SECTION 1.1. SECTION 5(A), (B) AND (E) OF THE ACT ARE ←
9 AMENDED AND THE SECTION IS AMENDED BY ADDING A SUBSECTION TO
10 READ:

11 Section 5. Consent to HIV-related test.

12 (a) Consent.--

13 (1) Except as provided in section 6 with respect to the
14 involuntary testing of a source patient, no HIV-related test
15 shall be performed without first obtaining the informed
16 [written] documented consent of the subject. Any consent
17 shall be preceded by an explanation of the test, including
18 its purpose, potential uses, limitations and the meaning of
19 its results.

20 (2) A health care provider may offer opt-out HIV
21 testing, where the subject is informed that the subject will
22 be tested for HIV unless the subject refuses.

23 (3) The health care provider shall document the
24 provision of informed consent, including pre-test
25 information, and whether the subject declined the offer of
26 HIV testing.

27 [(b) Pretest counseling.--No HIV-related test may be
28 performed without first making available to the subject
29 information regarding measures for the prevention of, exposure
30 to and transmission of HIV.]

1 * * *

2 [(E) POST-TEST COUNSELING.--



3 (1) NO POSITIVE OR NEGATIVE TEST RESULT SHALL BE
4 REVEALED TO THE SUBJECT WITHOUT AFFORDING THE SUBJECT THE
5 IMMEDIATE OPPORTUNITY FOR INDIVIDUAL, FACE-TO-FACE COUNSELING
6 ABOUT:

7 (I) THE SIGNIFICANCE OF THE TEST RESULTS.

8 (II) MEASURES FOR THE PREVENTION OF THE TRANSMISSION
9 OF HIV.

10 (III) THE BENEFITS OF LOCATING AND COUNSELING ANY
11 INDIVIDUAL BY WHOM THE SUBJECT MAY HAVE BEEN EXPOSED TO
12 HIV AND THE AVAILABILITY OF ANY SERVICES WITH RESPECT TO
13 LOCATING AND COUNSELING SUCH INDIVIDUAL.

14 (2) NO POSITIVE TEST RESULT SHALL BE REVEALED TO THE
15 SUBJECT WITHOUT, IN ADDITION TO MEETING THE REQUIREMENTS OF
16 PARAGRAPH (1), ALSO AFFORDING THE SUBJECT THE IMMEDIATE
17 OPPORTUNITY FOR INDIVIDUAL, FACE-TO-FACE COUNSELING ABOUT:

18 (I) THE AVAILABILITY OF ANY APPROPRIATE HEALTH CARE
19 SERVICES, INCLUDING MENTAL HEALTH CARE, AND APPROPRIATE
20 SOCIAL AND SUPPORT SERVICES.

21 (II) THE BENEFITS OF LOCATING AND COUNSELING ANY
22 INDIVIDUAL WHO THE INFECTED SUBJECT MAY HAVE EXPOSED TO
23 HIV AND THE AVAILABILITY OF ANY SERVICES WITH RESPECT TO
24 LOCATING AND COUNSELING SUCH INDIVIDUAL.]

25 (E.1) POST-TEST COUNSELING.--NO POSITIVE TEST RESULT SHALL
26 BE REVEALED TO THE SUBJECT WITHOUT AFFORDING THE SUBJECT THE
27 IMMEDIATE OPPORTUNITY FOR INDIVIDUAL, FACE-TO-FACE COUNSELING
28 ABOUT:

29 (1) THE SIGNIFICANCE OF THE TEST RESULTS.

30 (2) MEASURES FOR THE PREVENTION OF THE TRANSMISSION OF

1 HIV.

2 (3) THE BENEFITS OF LOCATING AND COUNSELING ANY
3 INDIVIDUAL BY WHOM THE SUBJECT MAY HAVE BEEN EXPOSED TO HIV
4 AND THE AVAILABILITY OF ANY SERVICES WITH RESPECT TO LOCATING
5 AND COUNSELING SUCH INDIVIDUAL.

6 (4) THE AVAILABILITY OF ANY APPROPRIATE HEALTH CARE
7 SERVICES, INCLUDING MENTAL HEALTH CARE, AND APPROPRIATE
8 SOCIAL AND SUPPORT SERVICES.

9 (5) THE BENEFITS OF LOCATING AND COUNSELING ANY
10 INDIVIDUAL WHO THE INFECTED SUBJECT MAY HAVE EXPOSED TO HIV
11 AND THE AVAILABILITY OF ANY SERVICES WITH RESPECT TO LOCATING
12 AND COUNSELING SUCH INDIVIDUAL.

13 * * *

14 SECTION 1.2. SECTION 6(B) (1) OF THE ACT IS AMENDED TO READ:
15 Section 6. Certification of significant exposure and testing
16 procedures.

17 * * *

18 (b) Opportunity for source patient to consent.--

19 (1) In the event that an exposed individual health care
20 provider or first responder is certified to have experienced
21 a significant exposure and has submitted to an HIV-related
22 test, no testing shall be performed on a source patient's
23 available blood unless the certifying physician provides a
24 copy of the written certification of significant exposure to
25 the source patient's physician or institutional health care
26 provider in possession of the available blood and the source
27 patient's physician or institutional health care provider has
28 made a good faith effort to:

29 (i) Notify the source patient or substitute
30 decisionmaker of the significant exposure.

1 (ii) Seek the source patient's voluntary informed
2 consent to the HIV-related testing as specified in
3 section 5(a).

4 [(iii) Provide counseling as required under section
5 5(b).]

6 * * *

7 Section 2. This act shall take effect in 60 days.