

AMENDED IN SENATE AUGUST 18, 2003
AMENDED IN ASSEMBLY JUNE 26, 2003
AMENDED IN ASSEMBLY JUNE 5, 2003
AMENDED IN ASSEMBLY MAY 19, 2003
AMENDED IN ASSEMBLY APRIL 1, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 685

Introduced by Assembly Member Leno

February 19, 2003

An act to amend Section 120917 of the Health and Safety Code, relating to health care, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 685, as amended, Leno. HIV counselors: education and training.

Existing law authorizes the State Department of Health Services, through its Office of AIDS, to participate in a rapid *human* immunodeficiency virus test research program conducted with the federal Centers for Disease Control and Prevention, involving innovative *HIV* testing and counseling programs.

Existing law authorizes an HIV counselor who is trained by the Office of AIDS and working in an HIV counseling and testing site funded by the department through a local health jurisdiction to perform specified HIV tests, in accordance with prescribed conditions, and *to*

order and report these test results to patients without authorization from a licensed health care professional or his or her authorized representative.

This bill would ~~permit~~ *provide that* an HIV counselor acting in accordance with the above provisions ~~to substitute a literacy and comprehension protocol approved by the department~~ *who successfully completes the HIV counselor training shall be deemed to have demonstrated sufficient literacy and comprehension to advance to the limited phlebotomy technician (LPT) training and to substitute completion of the HIV counselor training* for any requirement for a high school diploma or General Education Development (GED) equivalent, and would revise the conditions under which an HIV counselor may perform these HIV tests. ~~The bill would exempt an HIV counselor from certain certification fees.~~

The bill would also declare that it is the intent of the Legislature that the office, in consultation with the Laboratory Science Division of the department, develop a comprehensive curriculum that integrates appropriate training for an HIV counselor and ~~a limited phlebotomy technician (LPT)~~ *an LPT* that meets the LPT training standards set forth in designated statutes and regulations.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 120917 of the Health and Safety Code
- 2 is amended to read:
- 3 120917. (a) The department, through its Office of AIDS and
- 4 the authorized agents of the office, may participate in a rapid
- 5 human immunodeficiency virus test research program conducted
- 6 with the federal Centers for Disease Control and Prevention,
- 7 involving innovative HIV testing and counseling programs. Under
- 8 the rapid HIV test research program, as authorized by this section,
- 9 the department may do the following:
- 10 (1) Perform and report clinical test results using a rapid HIV
- 11 test for diagnosis, prior to test approval by the federal Food and
- 12 Drug Administration (FDA). However, test performance and
- 13 reporting shall only be done to the extent allowed under that



1 device’s investigational approval by the FDA and pursuant to a
2 California Health and Human Services Agency Institutional
3 Review Board-approved research protocol.

4 (2) Use a second independent HIV test to confirm initially
5 reactive test results to the extent allowed under the investigational
6 approval by the FDA. All rapid tests shall be confirmed using
7 technology approved by the federal Food and Drug
8 Administration. If the results from this confirmatory testing differ
9 from the results of the rapid test, the subject shall be notified. No
10 subject shall participate in the research protocol who does not
11 provide appropriate contact information.

12 (b) An HIV counselor who is trained by the Office of AIDS and
13 working in an HIV counseling and testing site funded by the
14 department through a local health jurisdiction, or its agents, may
15 do all of the following:

16 (1) Perform any HIV test that is classified as waived under the
17 federal Clinical Laboratory Improvement Act (CLIA) (42 U.S.C.
18 Sec. 263a and following) if all of the following conditions exist:

19 (A) The performance of the HIV test meets the requirements of
20 CLIA and Chapter 3 (commencing with Section 1200) of Division
21 2 of the Business and Professions Code.

22 (B) The person performing the HIV test meets the requirements
23 for the performance of waived laboratory testing pursuant to
24 subdivision (a) of Section 1206.5 of the Business and Professions
25 Code. For purposes of this subdivision and subdivision (a) of
26 Section 1206.5 of the Business and Professions Code, an HIV
27 counselor trained by the Office of AIDS shall be “other health care
28 personnel providing direct patient care” as referred to in
29 paragraph (12) of subdivision (a) of Section 1206.5 of the Business
30 and Professions Code.

31 ~~(C) The patient consents to a second test that will be performed~~
32 ~~to confirm a test result indicative of HIV infection that was~~
33 ~~obtained pursuant to this paragraph.~~

34 ~~(D)~~

35 (C) The patient is informed that the preliminary result of the
36 test is indicative of *the likelihood of* HIV infection and that the
37 result must be ~~confirmed by a second test. The preliminary test~~
38 ~~result can be confirmed either through laboratory testing~~
39 *confirmed by an additional more specific test*, or, if approved by
40 the federal Food and Drug Administration for that purpose, a



1 second different ~~HIV rapid~~ *rapid HIV* test. Nothing in this
2 subdivision shall be construed to allow an HIV counselor trained
3 by the Office of AIDS to perform any HIV test that is not classified
4 as waived under the CLIA.

5 (2) Notwithstanding Sections 1246.5 and 2053 of the Business
6 and Professions Code, order and report HIV test results from tests
7 performed pursuant to paragraph (1) to patients without
8 authorization from a licensed health care professional or his or her
9 authorized representative. Patients with indeterminate or positive
10 test results from tests performed pursuant to paragraph (1) shall be
11 referred to a licensed health care provider whose scope of practice
12 includes the authority to refer patients for laboratory testing for
13 further evaluation.

14 (c) Notwithstanding any other provision of law, an HIV
15 counselor acting in accordance with this section ~~may substitute a~~
16 ~~literacy and comprehension protocol approved by the department~~
17 ~~as part of the HIV counselor~~ *who successfully completes the HIV*
18 *counselor training shall be deemed to have demonstrated*
19 *sufficient literacy and comprehension to advance to the limited*
20 *phlebotomy technician training and may substitute successful*
21 *completion of the HIV counselor curriculum for any requirement*
22 for a high school diploma or General Education Development
23 (GED) equivalent.

24 ~~(d) An HIV counselor shall not be subject to any certification~~
25 ~~fees pursuant to Section 1246 of the Business and Professions~~
26 ~~Code.~~

27 SEC. 2. The Legislature finds and declares that the public
28 health threat of the AIDS epidemic and the challenges of outreach
29 to certain target populations for testing and counseling justify steps
30 to ensure rapid HIV testing is made available expeditiously and
31 safely. The Legislature further finds and declares that it would be
32 inefficient, costly, and an impediment to deployment of the rapid
33 HIV test if an HIV counselor has to be trained, using partially
34 redundant curricula, by the Office of AIDS in addition to an
35 authorized training program for a limited phlebotomy technician,
36 as defined in Section 1029.116 of Title 17 of the California Code
37 of Regulations pursuant to Section 1246 of the Business and
38 Professions Code. Therefore, it is the intent of the Legislature that
39 the Office of AIDS, in consultation with the Laboratory Science
40 Division of the State Department of Health Services, develop a



1 comprehensive curriculum that integrates appropriate training for
2 an HIV counselor and a limited phlebotomy technician (LPT) that
3 meets the LPT education, training, and experience standards set
4 forth in paragraph (1) of subdivision (a) of Section 1034 of Title
5 17 of the California Code of Regulations pursuant to Section 1246
6 of the Business and Professions Code, except as provided in
7 subdivision (c) of Section 120917 of the Health and Safety Code.

8 SEC. 3. This act is an urgency statute necessary for the
9 immediate preservation of the public peace, health, or safety
10 within the meaning of Article IV of the Constitution and shall go
11 into immediate effect. The facts constituting the necessity are:

12 In order to authorize more personnel to participate in
13 performing HIV tests as soon as possible, it is necessary that this
14 act take effect immediately.

