

# SENATE BILL 746

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By: **Senator Conway**

Introduced and read first time: February 12, 2007

Assigned to: Rules

Re-referred to: Education, Health, and Environmental Affairs, February 16, 2007

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 24, 2007

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Human Immunodeficiency Virus – Test Counseling and Informed Consent –**  
3 **Review**

4 FOR the purpose of ~~altering certain requirements for obtaining written informed~~  
5 ~~consent for human immunodeficiency virus (HIV) testing in accordance with~~  
6 ~~Department of Health and Mental Hygiene regulations; clarifying that an~~  
7 ~~informed consent for certain HIV testing be distinct from other consents;~~  
8 ~~altering the manner in which a certain patient identifying number is obtained;~~  
9 ~~requiring the Department to review and streamline certain regulations relating~~  
10 ~~to certain HIV test counseling requirements and to adopt or revise regulations~~  
11 ~~that address certain requirements; requiring the AIDS Administration to~~  
12 convene a workgroup including certain stakeholders to review and make  
13 recommendations regarding certain Centers for Disease Control and Prevention  
14 guidelines regarding HIV/AIDS; requiring the workgroup to review and consider  
15 certain best practices and research and data; requiring the Department  
16 workgroup to report to the Governor and General Assembly on or before a  
17 certain date; defining certain terms; and generally relating to human  
18 immunodeficiency virus counseling and ~~testing~~ informed consent procedures.

19 BY repealing and reenacting, ~~with~~ without amendments,

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### EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Article – Health – General  
2 Section 18–336  
3 Annotated Code of Maryland  
4 (2005 Replacement Volume and 2006 Supplement)

5 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
6 MARYLAND, That the Laws of Maryland read as follows:

7 **Article – Health – General**

8 18–336.

9 (a) (1) In this section the following words have the meanings indicated.

10 (2) “HIV” means the human immunodeficiency virus that causes  
11 acquired immune deficiency syndrome.

12 (3) “Health care provider” means a physician, nurse, or designee of a  
13 health care facility.

14 (b) Except as provided in Title 11, Subtitle 1, Part II of the Criminal  
15 Procedure Article or § 18–338.3 of this subtitle, before obtaining a fluid or tissue  
16 sample from the body of an individual for the purpose of testing the fluid or tissue for  
17 the presence of HIV infection, a health care provider shall:

18 (1) Obtain written informed consent from the individual ~~on~~ a uniform  
19 HIV informed consent form that the Department shall develop consistent with the  
20 requirements of the Department~~]~~ as established by regulations adopted by the  
21 Department; and

22 (2) Provide the individual with pretest counseling, including:

23 (i) Education about HIV infection and methods for preventing  
24 transmission;

25 (ii) Information about a physician’s duty to warn; and

26 (iii) Assistance in accessing health care available to an  
27 individual who tests positive for the HIV infection.

1 (c) Refusal to consent to the HIV antibody test or a positive test result may  
2 not be used as the sole basis by an institution or laboratory to deny services or  
3 treatment.

4 (d) If the individual is unable to give informed consent, substitute consent  
5 may be given under § 5–605 of this article.

6 (e) A physician or physician's designee who obtains a positive result from an  
7 HIV antibody test conducted in accordance with the provisions of subsection (b) of this  
8 section shall:

9 (1) Notify the individual from whom the fluid or tissue sample was  
10 obtained of the positive result;

11 (2) Provide the individual with a copy of the Department's publication  
12 describing available counseling services;

13 (3) Counsel the individual to inform all sexual and needle-sharing  
14 partners of the individual's positive HIV status;

15 (4) Offer to assist in notifying the individual's sexual and  
16 needle-sharing partners; and

17 (5) If necessary, take action appropriate to comply with § 18–337 of  
18 this subtitle.

19 (f) The informed consent ~~document~~ **FOR HIV DIAGNOSTIC TESTING** shall  
20 be distinct ~~and separate~~ from all other ~~consent forms~~ **CONSENTS**.

21 (g) A patient identifying number obtained from an anonymous ~~and~~  
22 ~~confidential test~~ site which is approved by the Department of Health and Mental  
23 Hygiene may be evidence of a patient's informed consent in lieu of a patient's  
24 signature.

25 SECTION 2. AND BE IT FURTHER ENACTED, That:

26 ~~(a) In consultation with HIV infected patients, AIDS advocacy organizations,~~  
27 ~~and other stakeholders, the Department of Health and Mental Hygiene shall review~~  
28 ~~and streamline the regulations relating to the pre-HIV test counseling and post-HIV~~  
29 ~~test counseling requirements in health care settings. The Department shall adopt or~~  
30 ~~revise the regulations that address these requirements.~~

1           (a) The AIDS Administration shall convene a workgroup that includes HIV  
 2 infected individuals, HIV/AIDS advocacy organizations, HIV service providers, and  
 3 other stakeholders to review and make recommendations regarding the Centers for  
 4 Disease Control and Prevention guidelines regarding HIV/AIDS, including the  
 5 guidelines relating to pre- and post-test counseling and written informed consent.  
 6 The workgroup shall review and consider best practices and research and data  
 7 regarding treatment for HIV/AIDS.

8           (b) ~~The Department of Health and Mental Hygiene~~ workgroup shall report to  
 9 the Governor and the General Assembly on or before January 1, 2008, in accordance  
 10 with § 2-1246 of the State Government Article, ~~on the changes recommended to be~~  
 11 ~~made in regulations of the Department~~ any recommendations of the workgroup under  
 12 subsection (a) of this section.

13           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
 14 June 1, 2007.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.