

/* KENTUCKY statutes address education for the public, students, inmates, health professionals, and law enforcement. Employment and housing discrimination are also covered, along with tests for offenders, inmates, and donated organs and blood. There are also insurance regulations and real estate disclosure laws. */

15.333. Educational program concerning HIV and AIDS for law enforcement officers. - (1) The Kentucky Law Enforcement Council shall develop in conjunction with the Cabinet for Human Resources an educational program on human immunodeficiency virus infection and acquired immunodeficiency virus syndrome of not more than four (4) hours to be delivered by the Department of Criminal Justice Training to all law enforcement officers subject to the provisions of KRS 15.440 or 61.300. The educational program shall be completed annually.

(2) The educational program may be a part of any continuing education program offered by the Department of Criminal Justice Training.

164.351. Information on preventing transmission of HIV infection to be made available to freshmen and transfer students. - (1) State colleges and universities shall provide information on how to prevent the transmission of the human immunodeficiency virus consistent with the Centers for Disease Control guidelines, to all freshmen and transfer students.

(2) Each state college or university shall inform students of the name and telephone number of a college or university counselor trained to counsel persons about the human immunodeficiency virus.

197.055. Education program on AIDS - Policies for inmates - Testing program. - (1) The Corrections Cabinet, in conjunction with the Cabinet for Human Resources, shall establish a mandatory introductory and continuing education program on human immunodeficiency virus and acquired immunodeficiency syndrome for all inmates. Programs shall be specifically designed for inmates while incarcerated and in preparation for release into the community. Consideration shall be given to cultural and other relevant differences among inmates in the development of educational materials and shall include emphasis on behavior and attitude change. The education program shall be continuously updated to reflect the latest medical information available.

(2) If there is evidence that an inmate, while in the custody of the cabinet, has engaged in behavior which places the inmate at a high risk of transmitting or contracting a human immunodeficiency disorder, the cabinet shall begin a testing program which is

consistent with guidelines of the Centers for Disease Control and recommendations of the Correctional Medical Authority and shall target persons who have been involved in or reasonably thought to have been involved in a high risk behavior. For purposes of this subsection, "high-risk behavior" includes:

- (a) Sexual contact with any person within the institution;
 - (b) The use of intravenous drugs;
 - (c) Tattooing; and
 - (d) Any other activity medically known to transmit the virus.
- (4) The results of the tests shall become a part of that inmate's medical file, accessible only to persons designated by agency administrative regulations.
- (5) The cabinet shall establish policies consistent with guidelines of the Centers for Disease Control and recommendations of the Correctional Medical Authority on the housing, physical contact, dining, recreation, and exercise hours or locations for inmates with immunodeficiency disorders as are medically indicated and consistent with the proper operation of its facilities.
- (6) The cabinet shall report to the General Assembly by July 1 each year as to the implementation of this program and the participation by inmates and staff.
- (7) If an inmate is involved in a situation with a cabinet employee which could result, according to the institution's physician, in the transmission of the human immunodeficiency virus infection, the inmate shall be tested.

EQUAL OPPORTUNITIES ACT

207.130. Definitions for KRS 207.140 to 207.240. - As used in KRS

207.140 to 207.240 unless the context otherwise requires:

- (1) "Persons" means one or more individuals, partnerships, municipalities, the state, or other political subdivisions within the state, associations, labor organizations, or corporations.
- (2) "Physical handicap" means the physical condition of a person whether congenital or acquired, which constitutes a substantial disability to that person and is demonstrable by medically accepted clinical or laboratory diagnostic techniques.
- (3) "Employer" means a person or governmental unit or officer in this state having in his or its employ eight or more individuals; and any person acting in the interest of an employer, directly or indirectly.
- (4) "Labor organization" means a labor organization and an agent of such an organization, and includes an organization of any kind, an agency or employee representation committee, group, association, or plan so engaged in which employees participate

and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and a conference, general committee, joint system or board, or joint council so engaged which is subordinate to a national or international labor organization.

(5) "Property" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy, as a residence, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(6) "To rent" includes to lease, to sublease, to furnish as compensation, to let and otherwise grant for a consideration the right to occupy premises not -owned by the occupant.

(7) "Unfair employment practice" means an act that is prohibited under KRS 207.150, 207.160 or 207.170.

(8) "Unfair housing practice" means an act that is prohibited under KRS 207.180 or 207.190.

(9) "Commissioner" shall mean the commissioner of the department of workplace standards, under the direction and supervision of the secretary of labor.

(10) "Department" shall mean the department of workplace standards in the labor cabinet.

207.135. Protections available to persons with HIV - Employment discrimination prohibited. - (1) Any person with acquired immunodeficiency syndrome, acquired immunodeficiency syndrome related complex, or human immunodeficiency virus shall have every protection made available to handicapped persons under KRS 207.130 to 207.240 and Section 504, Public Law No. 93-112, the Rehabilitation Act of 1973.

(2)(a) No person may require an individual to take a human immunodeficiency virus related test as a condition of hiring, promotion, or continued -employment, unless the absence of human immunodeficiency virus infection is a bona fide occupational qualification for the job in question.

(b) A person who asserts that a bona fide occupational qualification exists for human immunodeficiency virus-related testing shall have the burden of proving that:

1. The human immunodeficiency virus-related test is necessary to ascertain whether an employee is currently able to perform in a reasonable manner the duties of the particular job or whether an employee will present a significant risk of transmitting human immunodeficiency virus infection to other persons in the course of normal work activities; and

2. There exists no means of reasonable accommodation short of

requiring the test.

(3)(a) A person shall not discriminate against an otherwise qualified individual in housing, public accommodations, or governmental services on the basis of the fact that such individual is, or is regarded as being, infected with human immunodeficiency virus.

(b) A person or other entity receiving or benefiting from state financial assistance shall not discriminate against an otherwise qualified individual on the basis of the fact that such individual is, or is regarded as being, infected with human immunodeficiency virus.

(c) A person who asserts that an individual who is infected with human immunodeficiency virus is not otherwise qualified shall have the burden of proving that no reasonable accommodation can be made to prevent the likelihood that the individual will, under the circumstances involved, expose other individuals to a significant possibility of being infected with human immunodeficiency virus.

(d) No person shall fail or refuse to hire or discharge any individual, segregate or classify any individual in any way which would deprive or tend to deprive that individual of employment opportunities or adversely affect his or her status as an employee, or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment on the basis of the fact that the individual is a licensed health care professional who treats or provides patient care to persons infected with human immunodeficiency virus.

207.140. Preemployment inquiry - Basis for rejection of applicant for employment or housing. - (1) Nothing contained in KRS 207.130 to 207.240 shall be construed to prevent an employer from making any preemployment inquiry about the existence of an applicant's handicap and about the extent to which that handicap has been overcome by treatment, medication, appliances, or other rehabilitation.

(2) Nothing contained in KRS 207.130 to 207.240 shall be construed to prohibit the rejection of an applicant for employment or housing on the basis of:

(a) A physical handicap which interferes with a person's ability to adequately perform assigned job duties;

(b) Any handicap which is not demonstrable by medically accepted clinical or laboratory diagnostic techniques, including, but not limited to, alcoholism, drug addiction, and obesity; or

(c) Any communicable disease, either carried by, or afflicting the applicant.

207.150. Prohibited employment practices - Exceptions. -

(1) No employer shall fail or refuse to hire, discharge or discriminate against any handicapped individual with respect to wages, rates of pay, hours, or other terms and conditions of employment because of the person's physical handicap unless the handicap restricts that individual's ability to engage in the particular job or occupation for which he or she is eligible, or unless otherwise provided by law or, on the basis of the results of a human immunodeficiency virus-related test, unless the absence of human immunodeficiency virus infection is a bona fide occupational qualification of the job in question; nor shall any employer limit, segregate or classify handicapped individuals in any way which would deprive or tend to deprive any handicapped individual of employment opportunities or otherwise affect employee status because of physical handicap, or on the basis of the results of a human immunodeficiency virus related test, unless the handicap or absence of human immunodeficiency virus infection, constitutes a bona fide and necessary reason for the limitation, segregation or classification. This subsection shall not be construed to require any employer to modify his physical facilities or grounds in any way, or exercise a higher degree of caution for a handicapped individual than for any person who is not a handicapped individual.

(2) No employment agency, placement service, training school or center or labor organization shall fail or refuse to refer for employment or otherwise discriminate against individuals because of physical handicap.

207.160. Prohibited discriminatory acts by labor organization. -

No labor organization shall exclude or expel from its membership, or otherwise discriminate against individuals because of physical handicap or on the basis of a human immunodeficiency virus related test; nor shall a labor organization limit, segregate, or classify its membership, nor classify or fail or refuse to refer for employment any handicapped individual, in any way which would deprive or tend to deprive any handicapped individual of employment opportunities, or otherwise affect employee status or employment applicant status or as would adversely affect such person's wages, hours or conditions of employment, because of physical handicap or on the basis of a human immunodeficiency virus related test.

207.170. Prohibited discriminatory acts by employer or others. -

(1) No employer shall discharge, expel, refuse to hire, or otherwise discriminate against any person or applicant for employment, nor shall any employment agency discriminate against

any person, nor shall a labor organization discriminate against any member or applicant for membership because such person has opposed any practice made an unfair employment practice by KRS 207.130 to 207.240 or because he has filed a charge, testified, assisted or participated in any manner in an investigation, citizen's action suit, proceeding or hearing under KRS 207.130 to 207.240.

(2) No employer, labor organization, or joint labor-management committee controlling apprenticeship programs or other training or retraining, including on-the-job training programs, shall discriminate against any individual because of physical handicap in admission to, or employment in, any program established to provide apprenticeship or other training, except as otherwise provided by law.

207.180. Prohibited discriminatory acts related to housing. -

(1) No person shall refuse to sell or rent after the making of a bona fide offer, or refuse to negotiate for the sale or rental of' or otherwise make unavailable or deny property to any individual because of sex, or because of physical handicap.

(2) No person shall discriminate against any individual in the terms, conditions or privileges of sale or rental of property, or in the provision of services or facilities in connection therewith, because of such individual's sex, or because of physical handicap; however, this subsection shall not be construed to require any person selling or renting property to modify such property in any way or exercise a higher degree of care for a handicapped individual than for a person who is not a handicapped individual; nor shall this subsection be construed to relieve any person of any obligation generally imposed on all persons regardless of whether or not the person is a handicapped individual in a written lease, rental agreement, or contract of purchase or sale, or to forbid distinctions based on the inability to fulfill the terms and conditions, including financial obligations of such lease, agreement or contract.

(3) No person shall make, print, or publish, or cause to be made, printed or published any notice, statement, or advertisement with respect to the sale or rental of property that indicates any limitation or restriction as to individuals based on sex, or because of physical handicap, or an intention to make any such limitation or restriction; or

(4) No person shall represent to any individual because of sex or because of physical handicap that any property is not available for inspection, sale or rental when such property is in fact so available.

(5) Nothing in this section shall apply to:

- (a) Discrimination on the basis of sex by the YMCA, YWCA and similar type single sex dormitory rental properties and any other rental properties where there are common rather than private bathroom and sanitary facilities; or
- (b) A landlord who refuses to rent to an unmarried couple of opposite sexes;
- (c) To the rental of a housing accommodation in a building which contains housing accommodations for not more than four (4) families living independently of each other if the owner or a member of his family resides in one (1) of the housing accommodations;
- (d) To a rooming or boarding house containing not more than four (4) rooms for rent or hire and which is within a building occupied by the proprietor as his residence.

207.190. Prohibited discriminatory acts related to loans. - No bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in the making of commercial real estate loans, shall deny a loan or -other financial assistance to a handicapped individual applying therefor for the purpose of purchasing, constructing, improving, repairing, or maintaining property, or discriminate against him in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance because of such individual's physical handicap when such handicap does not impair his or her ability to fulfill the terms or conditions of such loan or other financial assistance.

207.200. Enforcement by workplace standards department. -

- (1) The Kentucky department of workplace standards is authorized to enforce the employment provisions of KRS 207.130 to 207.240 in conjunction with the state attorney general's office and the state and local courts.
- (2) Any handicapped individual requesting the intervention of the Kentucky department of workplace standards under this section shall, within one hundred and eighty (180) days of the alleged incident, submit with his request a signed, sworn statement specifying and describing the handicap or handicaps which affect him. This statement may be used by the commissioner of workplace standards or his representative to determine if the individual does, or does not, have a "physical handicap" as defined in KRS 207.130(2). If the commissioner of workplace standards or his representative determines that the aggrieved individual does have a handicap which falls under the definition in KRS 207.130(2), the department of workplace standards shall provide a copy of the

aggrieved individual's signed statement to the employer for his inspection.

(3) In the event the employer wishes to challenge the validity of the statement, he shall so notify the commissioner of workplace standards, who shall in turn notify the aggrieved individual. If the aggrieved individual wishes the department of workplace standards to continue its involvement with the case, he shall be required to submit to the commissioner of workplace standards, within thirty (30) days of such notice, a signed, sworn statement from a licensed physician of his choice, or from one of the state or federal agencies serving the handicapped:

(a) Specifying and describing the handicap or handicaps affecting the individual; and

(b) Indicating any specific type of employment for which such handicap should be considered a bona fide or necessary reason for limitation or exclusion.

(4)(a) The state agencies which may be consulted under subsection (3) of this section may include, but are not limited to, the following:

1. Department of education, office of vocational rehabilitation services;

2. Cabinet for human resources, department for health services;

3. Cabinet for human resources, division of disability determination.

(b) The commissioner of workplace standards, in conjunction with the agencies designated in this subsection, is authorized to adopt appropriate regulations governing the issuance and setting the standards of determinations of ability or disability;

(c) The agencies designated in this subsection, and any other state agency which serves the handicapped and which the commissioner of workplace standards deems proper, shall cooperate to the fullest with the department of workplace standards in issuing a statement of disability and limitations as specified in subsection (3) of this section within twenty (20) days of the date the handicapped individual presents himself before such agency for examination.

(5)(a) For the purposes of KRS 207.130 to 207.240, the commissioner of workplace standards, or his authorized representative, shall have the power to enter the place of employment of any employer, labor organization or employment agency to inspect and copy employment records, to compare character of work and operations on which persons employed by him are engaged, to question such persons, and to obtain such other information as is reasonably necessary to make a preliminary determination that the aggrieved individual is, or is not, fully capable of carrying out the duties of the job which he or she had

been denied;

(b) In the event that a preliminary determination is made that the aggrieved individual is not fully capable of carrying out the duties of the job which he or she had been denied, the aggrieved individual and the employer shall both be so advised;

(c) The aggrieved individual, within ten (10) days of receiving such notification, may file with the department of workplace standards an application for reconsideration of the determination. Upon such application, the commissioner of workplace standards or his representative shall make a new determination within ten (10) days whether the aggrieved individual is, or is not, fully capable of carrying out the duties of the job which he or she had been denied. If the determination is again made that the aggrieved individual is not fully capable of carrying out these duties, the aggrieved individual and the employer shall both be so advised;

(d) In the event that a preliminary determination has been made that the aggrieved individual is fully capable of carrying out the duties of the job which he or she had been denied, the employer, labor organization or employment agency shall be so advised and encouraged to make an immediate offer to the aggrieved individual of the position which he or she had been denied. In the event the position has already been filled, the employer, labor organization or employment agency shall be encouraged to make an offer to the aggrieved individual of the next available position for which he or she is qualified.

207.210. Administrative complaint procedure - Types of affirmative action. - (1) In the event the employer, labor organization or employment agency continues to refuse employment to the aggrieved individual, the aggrieved individual may file a formal administrative complaint with the department of workplace standards and, upon such filing, the commissioner of workplace standards or his representative is authorized to examine witnesses under oath, and to require by subpoena the attendance and testimony of witnesses and the production of any documentary evidence relating to the subject matter of the investigation. In the event of the failure of any person to attend, testify, or produce documents under or in response to a subpoena, the circuit court in the judicial district where the hearing is being held, on application of the commissioner or his representative, may issue an order requiring said person to appear before the commissioner or his authorized representative, or to produce documentary evidence, and any failure to obey such order of the court may be punished by the court as a contempt thereof.

(2) If the department of workplace standards determines that the

employer, labor organization or employment agency has not engaged in an unfair employment practice, it shall state its findings of fact and conclusions of law and shall issue an order dismissing the complaint. A copy of the order shall be delivered to the complainant, the employer, labor organization or employment agency and such other public officers and persons as the department of workplace standards deems proper.

(3) If the department of workplace standards determines that the employer, labor organization or employment agency has engaged in an unfair employment practice, the department shall state its findings of fact and conclusions of law and shall issue an order requiring the employer, labor organization or employment agency to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the department will carry out the purposes of KRS 207.130 to 207.240. A copy of the order shall be delivered to the employer, the labor organization or employment agency, the complainant, and to such other public officers and persons as the department of workplace standards deems proper.

(4) Affirmative action ordered under this section may include, but is not limited to:

(a) Hiring, reinstatement, or upgrading of employees with or without back pay. Interim earnings or amounts earnable with reasonable diligence by the aggrieved individual shall operate to reduce the back pay otherwise allowable;

(b) Admission or restoration of the aggrieved individual to union membership, admission to or participation in a guidance program, apprenticeship training program, on-the-job training program, or other occupational training or retraining program, and the utilization of objective criteria in the admission of individuals to such programs;

(c) The extension to all individuals of the full and equal enjoyment of the advantages, facilities, privileges and services of the employer;

(d) Reporting as to the manner of compliance;

(e) Posting notices in conspicuous places in the employer's place of business in form prescribed by the department of workplace standards.

207.220. Cities and counties may adopt antidiscrimination measures. - Cities and counties may adopt and enforce, or authorize commissions or agencies to enforce ordinances, orders and resolutions prohibiting unfair treatment of individuals on the basis of physical handicap, and may prescribe penalties for violation thereof, such penalties being in addition to those herein authorized.

207.230. Citizen suits. - Notwithstanding the provisions of KRS 207.200 and 207.210, citizen suits may be commenced under the following terms and conditions:

(1) Any person deeming himself injured by any act in violation of the provisions of this chapter shall have a civil cause of action in circuit court to enjoin further violations, and to recover the actual damages sustained by him, and upon judicial finding of any violation of KRS 207.150 to 207.190, shall recover the costs of the law suit, including a reasonable fee for his attorney of record, all of which shall be in addition to any other remedies contained in KRS 207.130 to 207.240.

(2) Notice. No action may be commenced:

(a) Prior to thirty (30) days after the plaintiff has given notice of the violation to the commissioner of workplace standards.

(b) If the commissioner of workplace standards has commenced and is diligently prosecuting a civil action to require compliance with KRS 207.130 to 207.240; however, the aforementioned conditions do not prohibit citizen-initiated civil enforcement action contemporaneously with criminal enforcement efforts by the state.

(c) In any civil action under this section, the commissioner of workplace standards [labor], under the direction of the secretary of the labor cabinet, if not a party, may intervene only with consent of the person bringing the action. If the administrator is allowed to intervene, he may not alter the cause of action, delay the proceedings, or make any decisions, settlement agreements, or agree to any consent orders or enforcement proceeding without the informed consent of the person initiating the citizens enforcement action.

207.240. Title. - KRS 207.130 to 207.230 shall be known and may be cited as the "1976 Equal Opportunities Act."

207.250. Disclosure of HIV information in real estate transaction prohibited. - (1) The fact that an occupant of real property is infected or has been infected with human immunodeficiency virus or diagnosed with acquired immunodeficiency syndrome is not a material fact that shall be disclosed in a real estate transaction.

(2) No cause of action shall arise against an owner of real property or his agent, or any agent of a transferee of real property for the failure to disclose to the transferee that an occupant of that property was infected with human immunodeficiency virus or diagnosed with acquired

immunodeficiency syndrome.

207.260. Right of action - Recovery for each violation. - (1) Any person aggrieved by a violation of KRS 207.135, 207.150, 207.160, or 304.12-013 shall have a right of action in District Court and may recover for each violation:

(a) Against any person who violates a provision of this section, liquidated damages of one thousand dollars (\$1,000) or actual damages, whichever is greater.

(b) Against any person who intentionally or recklessly violates a provision of this section, liquidated damages of five thousand dollars (\$5,000) or actual damages, whichever is greater.

(c) Reasonable attorney's fees.

(d) Such other relief, including an injunction, as the court shall deem appropriate.

(2) Nothing in this section limits the right of the person aggrieved by a violation of this section to recover damages or other relief under any other applicable law.

214.181. Legislative findings - General consent to testing for HIV - Emergency procedures - Disclosures of test results - Voluntary testing program in each county. - (1) The General Assembly finds that the use of tests designed to reveal a condition indicative of human immunodeficiency virus (HIV) infection can be a valuable tool in protecting the public health. The General Assembly finds that despite current scientific knowledge that zidovudine (AZT) prolongs the lives of acquired immunodeficiency syndrome victims, and may also be effective when introduced in the early stages of human immunodeficiency virus infection, many members of the public are deterred from seeking testing because they misunderstand the nature of the test or fear that test results will be disclosed without their consent. The General Assembly finds that the public health will be served by facilitating informed, voluntary, and confidential use of tests designed to detect human immunodeficiency virus infection.

(2) A person who has signed a general consent form for the performance of medical procedures and tests is not required to also sign or be presented with a specific consent form relating to medical procedures or tests to determine human immunodeficiency virus infection, antibodies to human immunodeficiency virus, or infection with any other causative agent of acquired immunodeficiency syndrome that will be performed on the person during the time in which the general consent form is in effect. However, a general consent form shall instruct the patient that, as part of the medical procedures or tests, the patient may be tested for human immunodeficiency virus infection,

hepatitis, or any other blood-borne infectious disease if a doctor orders the test for diagnostic purposes. Except as otherwise provided in subsection (5)(c) of this section, the results of a test or procedure to determine human immunodeficiency virus infection, antibodies to human immunodeficiency virus, or infection with any probable causative agent of acquired immunodeficiency syndrome performed under the authorization of a general consent form shall be used only for diagnostic or other purposes directly related to medical treatment.

(3) In any emergency situation where informed consent of the patient cannot reasonably be obtained before providing health care services, there is no requirement that a health care provider obtain a previous informed consent.

(4) The physician who orders the test pursuant to subsections (1) and (2) of this section, or the attending physician, shall be responsible for informing the patient of the results of the test if the test results are positive for human immunodeficiency virus infection. If the tests are positive, the physician shall also be responsible for either:

(a) Providing information and counseling to the patient concerning his infection or diagnosis and the known medical implications of such status or condition; or

(b) Referring the patient to another appropriate professional or health care facility for the information and counseling.

(5)(a) No person in this state shall perform a test designed to identify the human immunodeficiency virus, or its antigen or antibody, without first obtaining the informed consent of the person upon whom the test is being performed, except as specified in subsections (2) and (3) of this section.

(b) No test result shall be determined as positive, and no positive test result shall be revealed to any person, without corroborating or confirmatory tests being conducted.

(c) No person, who has obtained or has knowledge of a test result pursuant to this section, shall disclose or be compelled to disclose the identity of any person upon whom a test is performed, or the results of the test in a manner which permits identification of the subject of the test, except to the following persons:

1. The subject of the test or the subject's legally authorized representative;
2. Any person designated in a legally effective release of the test results executed prior to or after the test by the subject of the test or the subject's legally authorized representative;
3. A physician, nurse, or other health care personnel who has a legitimate need to know the test result in order to provide for

his protection and to provide for the patient's health and welfare;

4. Health care providers consulting between themselves or with health care facilities to determine diagnosis and treatment;

5. The cabinet, in accordance with rules for reporting and controlling the spread of disease, as otherwise provided by state law;

6. A health facility or health care provider which procures, processes, distributes, or uses:

a. A human body part from a deceased person, with respect to medical information regarding that person; or

b. Semen provided prior to the effective date of this section for the purpose of artificial insemination;

7. Health facility staff committees, for the purposes of conducting pro-gram monitoring, program evaluation, or service reviews;

8. Authorized medical or epidemiological researchers who shall not further disclose any identifying characteristics or information;

9. A person allowed access by a court order which is issued in compliance with the following provisions:

a. No court of this state shall issue an order to permit access to a test for human immunodeficiency virus performed in a medical or public health setting to any person not authorized by this section or by KRS 214.420. A court may order an individual to be tested for human immunodeficiency virus only if the person seeking the test results has demonstrated a compelling need for the test results which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for testing and disclosure against the privacy interest of the test subject and the public interest which may be disserved by disclosure which deters blood, organ, and semen donation and future human immunodeficiency virus-related testing or which may lead to discrimination. This paragraph shall not apply to blood bank donor records;

b. Pleadings pertaining to disclosure of test results shall substitute a pseudonym for the true name of the subject of the test. The disclosure to the parties of the subject's true name shall be communicated confidentially, in documents not filed with the court;

c. Before granting any order, the court shall provide the individual whose test result is in question with notice and a reasonable opportunity to participate in the proceedings if he is not already a party;

d. Court proceedings as to disclosure of test results shall be conducted in camera, unless the subject of the test agrees to a

hearing in open court or unless the court determines that a public hearing is necessary to the public interest and the proper administration of justice;

e. Upon the issuance of an order to disclose test results, the court shall impose appropriate safeguards against unauthorized disclosure, which shall specify the persons who may have access to the information, the purposes for which the information shall be used, and appropriate prohibitions on future disclosure.

No person to whom the results of a test have been disclosed shall disclose the test results to another person except as authorized by this subsection. When disclosure is made pursuant to this subsection, it shall be accompanied by a statement in writing which includes the following or substantially similar language:

"This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of such information without the specific written consent of the person to whom such information pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is NOT sufficient for this purpose. An oral disclosure shall be accompanied by oral notice and followed by a written notice within ten (10) days.

(6)(a) The Cabinet for Human Resources shall establish a network of voluntary human immunodeficiency virus testing programs in every county in the state. These programs shall be conducted in each public health department established under the provisions of KRS Chapter 211. Additional programs may be contracted to other private providers to the extent that finances permit and local circumstances dictate;

(b) Each public health department shall have the ability to provide counseling and testing for the human immunodeficiency virus to each patient who receives services and shall offer the testing on a voluntary basis to each patient who requests the test;

(c) Each public health department shall provide a program of counseling and testing for human immunodeficiency virus infection, on an anonymous or confidential basis, dependent on the patient's desire. The cabinet shall continue to provide for anonymous testing and counseling;

(d) The result of a serologic test conducted under the auspices of the -cabinet shall not be used to determine if a person may be insured for disability, health, or life insurance or to screen or determine suitability for, or to discharge a person from, employment. Any person who violates the provisions of this subsection shall be guilty of a Class A misdemeanor.

(7) No public health department and no other private or public

facility established for the primary purpose of conducting a testing program for acquired immunodeficiency syndrome, acquired immunodeficiency syndrome related complex, or human immunodeficiency virus status without first registering with the cabinet, complying with all other applicable provisions of state law, and meeting the following requirements:

(a) The program shall be directed by a person who has completed an educational course approved by the cabinet in the counseling of persons with acquired immunodeficiency syndrome, acquired immunodeficiency syndrome related complex, or human immunodeficiency virus infection;

(b) The program shall have all medical care supervised by a physician licensed under the provisions of KRS Chapter 311;

(c) The program shall have all laboratory procedures performed in a laboratory licensed under the provisions of KRS Chapter 333;

(d) Informed consent shall be required prior to testing. Informed consent shall be preceded by an explanation of the test, including its purpose, potential uses, and limitations and the meaning of its results;

(e) The program, unless it is a blood donor center, shall provide pretest counseling on the meaning of a test for human immunodeficiency virus, including medical indications for the test; the possibility of false positive or false negative results; the potential need for confirmatory testing; the potential social, medical, and economic consequences of a positive test result; and the need to eliminate high-risk behavior;

(f) The program shall provide supplemental corroborative testing on all positive test results before the results of any positive test is provided to the patient;

(g) The program shall provide post-test counseling, in person, on the meaning of the test results; the possible need for additional testing; the social, medical, and economic consequences of a positive test result; and the need to eliminate behavior which might spread the disease to others;

(h) Each person providing post-test counseling to a patient with a positive test result shall receive specialized training, to be specified by regulation of the cabinet, about the special needs of persons with positive results, including recognition of possible suicidal behavior, and shall refer the patient for further health and social services as appropriate;

(i) When services are provided for a charge during pretest counseling, testing, supplemental testing, and post-test counseling, the program shall provide a complete list of all charges to the patient and the cabinet;

(j) Nothing in this subsection shall be construed to require a facility licensed under KRS Chapter 333 or a person licensed

under the provisions of KRS Chapters 311, 312 or 313 to register with the cabinet if he does not advertise or hold himself out to the public as conducting testing programs for human immunodeficiency virus infection or specializing in such testing.

(8) Any violation of this section by a licensed health care provider shall be a ground for disciplinary action contained in the professional's respective licensing chapter.

(9) Except as provided in subsection (6)(d) of this section, insurers and others participating in activities related to the insurance application and underwriting process shall be exempt from this section.

(10) The cabinet shall develop a program standards consistent with the provisions of this section for counseling and testing persons for the human -immunodeficiency virus.

KENTUCKY SEXUALLY TRANSMITTED DISEASE CONTROL CONFIDENTIALITY ACT

OF 1986

214.400. Short title. - KRS 214.410, 214.420 and 214.990(6) may be cited as the "Kentucky Sexually Transmitted Disease Control Confidentiality Act of 1986."

214.410. Definitions. - (1) "Cabinet" means the Cabinet for Human Resources; and

(2) "Sexually transmitted disease" means syphilis, gonorrhea, chancroid, granuloma inguinale, genital herpes, non-gonococcal urethritis, mucopurulent cervicitis, acquired immunodeficiency syndrome (AIDS), human immunodeficiency virus (HIV) infection, chlamydia trachomatis infections and any other sexually transmitted disease designated by the cabinet under the provisions of KRS Chapter 13A.

214.420. Records declared confidential - Application. - (1) The general assembly hereby declares that confidentiality is essential for the proper administration and operation of sexually transmitted disease control activities in this state and that the principle of confidentiality must remain inviolate.

(2) All information, records and reports in the possession of local health departments or the cabinet for human resources and which concern persons infected with or suspected of being infected with or tested for or identified in an epidemiologic investigation for sexually transmitted disease are hereby declared to be strictly confidential and only personnel of local -health departments and the cabinet for human resources who are assigned to sexually transmitted disease control activities shall have access to such information, records and reports.

- (3) Nothing in this section shall be construed as preventing:
- (a) The release of medical information to the physician retained by the person infected with or suspected of being infected with a sexually transmitted disease;
 - (b) The release of medical or epidemiological data or information for statistical purposes in a manner so that no individual person can be identified;
 - {c) The release of medical information with the written consent of all persons identified in the information to be released;
 - (d) The release of medical or epidemiological information necessary to enforce the provision of the rules and regulations of the cabinet for human resources, issued pursuant to KRS Chapter 13A, relating to the control and treatment of sexually transmitted disease; and
 - (e) The release of medical information made to medical personnel in a medical emergency to the extent necessary to protect the health or life of the named party.

BLOOD SUPPLY SCREENING

214.450. Definitions. - As used in KRS 214.452 to 214.466, unless the context otherwise requires:

- (1) "Blood" means any blood, blood product, blood component, or blood derivative including plasma.
- (2) "Blood establishment" means a place of business under one (1) management at one (1) general physical location which engages in the collection, preparation, processing, labeling, packaging, and dispensing of blood or blood products to any health care facility, health service, or health care provider.
- (3) "Communicable disease" means only a communicable disease which may be transmitted by blood and as set forth in any administrative regulation issued under KRS 214.460 and pursuant to KRS Chapter 13A.
- (4) "Health facility" means any health facility set forth under KRS 216B.015(11) which provides for the transfusion of blood into a living human body.
- (5) "Health care provider" means any licensed dentist, physician, osteopath, registered nurse, practical nurse, certified paramedic, certified emergency medical technician, or physician assistant.
- (6) "Health service" means any health service as set forth under KRS 216B.015(12) and which provides for the transfusion of blood into a living human body.
- (7) "Sexually transmitted disease" means only a blood borne sexually transmitted disease as provided under KRS 214.410(2) and as set forth in any administrative regulation issued under KRS 214.460 and pursuant to KRS

(8) "Donor" means either a paid or volunteer donor of blood.

214.452. Blood establishments to be federally licensed - Donor conditions - Forms - Sign posting. - (1) All blood establishments within the Commonwealth shall be licensed by the U.S. food and drug administration and remain in compliance with all applicable federal regulations. All blood establishments shall test blood

for infection with the human immunodeficiency virus (HIV) or any known causative agent of acquired immune deficiency syndrome (AIDS), any blood borne communicable disease, and any blood borne sexually transmitted disease in accordance with such tests as are approved and required by the U.S. food and drug administration.

(2) It shall be the duty of the administrator of any blood establishment which collects blood for the purpose of distributing to another health service, health facility or health care provider such blood for transfusion into a human person to:

(a) Secure a signed written risk factor history and donor consent form for each potential paid or volunteer donor for the purpose of determining if such potential donor is at high risk for infection with the human immune deficiency virus, or has tested confirmatory positive for infection with the human immunodeficiency virus; or has acquired immune deficiency syndrome; or has tested confirmatory positive for infection with any causative agent for acquired immune deficiency syndrome recognized by the U.S. centers for disease control; or has a blood borne communicable disease; or has a blood borne sexually transmitted disease;

(b) Provide a means for a potential paid or volunteer donor to self-elect not to donate blood;

(c) Refuse donation or sale of blood by persons at high risk for infection with the human immunodeficiency virus, or who have been medically diagnosed as having acquired immune deficiency syndrome, or who have tested confirmatory positive for infection with the human immunodeficiency virus, or who have a blood borne communicable disease, or who have a blood borne sexually transmitted disease;

(d) Post a sign in the blood establishment which is visible to all potential paid or voluntary blood donors and which states: "Persons with acquired immune deficiency syndrome (AIDS), or who have tested confirmatory positive for infection with the human immunodeficiency virus (HIV), or who have a blood borne communicable disease or sexually transmitted disease or who have been exposed to one (1) or more risk factors determined by the U.S. centers for disease control to place such person at high risk for infection with the HIV virus or any AIDS-causative agent, are prohibited under Kentucky Revised Statutes from

donating or selling blood. Persons violating the law are guilty of a Class D felony. ASK STAFF OF THIS BLOOD ESTABLISHMENT."

(3) The provisions of this section shall not be construed to impose requirements inconsistent with donor consent requirements set out in U.S. food and drug administration or American Association of Blood Banks standards.

214.454. Donations - Conditions. - (1) No donor or potential donor of blood shall donate blood if the person is at high risk for infection with the HIV virus, or has AIDS or has tested confirmatory positive for antibodies to the HIV virus or any causative agent of AIDS.

(2) No donor or potential donor of blood shall give false information to the staff of a blood establishment about such person's diagnosis as having AIDS or risk for infection or actual infection with the human immunodeficiency virus, or having any known causative agent of AIDS, or having a blood borne sexually transmitted disease, or having a blood borne communicable disease.

214.456. Autologous or directed donations - Charges - Conditions. - (1) Any person who wishes to direct a donation of his blood to himself or to a particular individual may and shall be permitted to do so. The charge for any directed donation of blood or autologous blood donation shall not exceed more than twenty percent (20%) of the charge for a regular unit of blood.

(2) Any person who wishes to direct a donation of his blood to a particular individual may do so provided the requirements of KRS 214.454 are met provided the recipient and the recipient's attending physician have requested the donation.

(3) The directed donation may be used for someone other than or in addition to the designated recipient if the donor's blood is not compatible with that of the designated recipient or if any part of the donation is not needed by the designated recipient.

(4) Any blood establishment which collects blood donations shall advise prospective donors of the provisions of this section and of KRS 214.452 to 214.466.

214.458. Blood for transfusion - Collection - Labeling - Destruction - Data retention. - (1) No blood shall be transfused into a living human person by a health care provider, or within a health facility or a health service unless the blood establishment from which the blood is received is licensed by the U.S. food and drug administration.

(2) Each unit of blood collected by a blood establishment for transfusion into a living human person shall be affixed with the

U.S. food and drug administration required label which includes a donor identification number through which the following information can be obtained:

- (a) Date the blood was collected;
 - (b) Name of blood establishment;
 - (c) Nonidentifying code representing the name of the blood donor;
 - (d) A blood establishment serial number for the blood;
 - (e) The date of laboratory testing of the blood;
 - (f) The name of the person and laboratory testing the blood;
 - (g) The laboratory test results.
- (3) Each unit of blood received by a blood establishment or health facility within the Commonwealth from an out-of-state blood establishment shall contain a label in accordance with the provisions of subsection (2) of this section and said blood establishment or health facility shall either test such blood in accordance with the requirements for blood establishments within the Commonwealth under the provisions of subsection (2) of KRS 214.452 or may accept documented evidence of such test results as are required under subsection (2) of this section for blood collected within the Commonwealth.
- (4) Each laboratory testing such blood shall maintain for ten (10) years from the date of testing and each blood establishment shall maintain for ten (10) years from the date of collection a list containing the information set forth in subsection (2) of this section.
- (5) No blood may be transfused into any patient in any health facility or health service or by any health care provider unless such unit of blood has affixed to it the label as required under this section and the blood has tested negative for the human immunodeficiency virus or any causative agent of AIDS, or any blood borne sexually transmitted disease or communicable disease as provided under KRS 214.460. When a unit of blood is transfused into any patient, a label containing the donor identification number required under this section shall be removed from the unit and affixed to the patient's medical chart; provided, however, this section shall not apply to frozen blood products or blood derivatives except that for frozen blood products and blood derivatives, the donor identification number required under this section shall be recorded in the patient's medical chart.
- (6) Any unit of blood not containing the label required under this section shall be destroyed by the health facility, health service or health care provider.
- (7) Any unit of blood testing confirmatory positive for infection with the HIV virus or any known causative agent of AIDS and in the possession of a health facility, health service or

health care provider may be donated to educational and scientific research institutions for the purpose of scientific research only and not for transfusion.

214.460. Identification of reportable communicable or sexually transmitted diseases in administrative regulations. - The secretary of the cabinet for human resources shall set forth in administrative regulation subject to the provisions of KRS Chapter 13A those reportable communicable diseases or sexually transmitted diseases which may be transmitted through blood.

214.462. Donor consent and risk factor history forms, standardization. - The secretary of the cabinet for human resources shall develop and issue a standardized blood donor consent form and a standardized risk factor history form for mandatory use by any blood establishment which collects blood for the purpose of distributing such blood for human transfusion. The standardized blood donor consent form shall meet standards for suitability of donors as set forth in KRS 214.452 to 214.466 and by the U.S. food and drug administration.

214.464. Transfusion of untested blood - Conditions - Patient notification. - (1) Untested blood may be transfused only in an emergency situation in which the attending physician determines a patient is in imminent danger of death or great bodily harm and no tested and labeled blood as set forth under KRS 214.458 is readily available to suitably alleviate the emergency situation; provided, however, that the attending physician shall, for any patient in such situation whose condition renders him incapable of giving consent, seek from the next of kin of the patient, if available, prior informed consent to transfuse any blood. For purposes of this section, "next of kin" means, in the following order, the husband or wife of the patient; if there is none, then the mother or father of the patient; if there is none, then any child of the patient; if there is none, then any brother or sister of the patient.

(2) Blood establishments may release untested blood, collected under standards set forth in KRS 214.452, at the request of a physician or health facility or health service in emergency circumstances as provided under this section. If blood has not been tested, the test shall be performed after issuance of the blood. If the blood subsequently tests confirmatory positive, the patient's attending physician shall be immediately notified. The attending physician shall notify the patient of the test results.

214.466. Health care provider and facility civil liability exemption. - No health facility or physician or health care provider transfusing untested blood into a patient during an emergency situation if the blood is required to save the life of the patient shall be liable in civil damages or criminally, provided the provisions of KRS 214.464 are met.

ACQUIRED IMMUNODEFICIENCY SYNDROME

214.600. Legislative findings. - The General Assembly finds that acquired immunodeficiency syndrome, otherwise known as AIDS, constitutes a serious and unique danger to the public health and welfare. The General Assembly finds that acquired immunodeficiency syndrome is transmitted by sexual activity, by intravenous drug use, or from an infected mother to a fetus and that public fear of contagion from casual contact is not supported by any scientific evidence. The General Assembly finds that acquired immunodeficiency syndrome is transmitted by a retrovirus which makes the possibility of development of an immunization or cure highly unlikely in the near future. The General Assembly finds that, once infected, there is a high probability that an individual will develop acquired immunodeficiency syndrome or a related syndrome and die a premature death as a result, but may live productively for years in a communicable state without showing any signs or symptoms of illness. The General Assembly finds the unique methods of transmission of this disease, and its inevitably fatal course, have raised public fears; changed the attitudes of employers, insurers, educators, law enforcement personnel, and health and medical providers about dealing with the disease; and could unexpectedly raise the medical costs of this state. The General Assembly intends to establish programs and requirements related to acquired immunodeficiency syndrome which carefully balance medical necessity, the right to privacy, and protection of the public from harm and which establish public programs for the care and treatment of persons with acquired immunodeficiency syndrome and related conditions.

214.605. Public education program. - (1) The Cabinet for Human Resources shall establish a program to educate the public about the threat of acquired immunodeficiency syndrome.

(2) The acquired immunodeficiency syndrome education program shall:

(a) Be designed to reach all segments of the Commonwealth's population;

(b) Contain special components designed to reach minority groups within the state;

- (c) Impart knowledge to the public about methods of transmission of acquired immunodeficiency syndrome and methods of prevention;
 - (d) Educate the public about transmission risks in social, employment, and educational situations;
 - (e) Educate health care workers and health facilities' employees about methods of transmission and prevention in their unique workplace environments;
 - (f) Contain special components designed to reach persons who may frequently engage in behaviors placing them at a high risk for acquiring acquired immunodeficiency syndrome;
 - (g) Provide information and consultation to state agencies to educate all state employees;
 - (h) Provide information and consultation to state and local agencies to educate law enforcement and correctional personnel and inmates;
 - (i) Provide information and consultation to local governments to educate local government employees;
 - (j) Make information available to private employers and encourage them to distribute this information to their employees; and
 - (k) Contain special components which emphasize appropriate behavior and attitude change.
- (3) The program designed by the Cabinet for Human Resources shall utilize all appropriate forms of the media and shall identify sources of educational materials that can be used by businesses, schools, and health care providers in the regular course of their business.
- (4) The department may contract with other persons in the design, development, and distribution of the components of the education program.

214.610. Educational course to be completed by health care workers and social workers. - (1) The Cabinet for Human Resources shall approve appropriate educational courses on the transmission, control, treatment and prevention of the human immunodeficiency virus and acquired immunodeficiency syndrome with an emphasis on appropriate behavior and attitude change to be completed as specified in the respective chapters by each person licensed or certified under KRS Chapters 311,312, 313, 314, 315, 320, 327, 333, 335 and emergency medical technicians licensed pursuant to KRS Chapter 211.

(2) Each licensee or certificate holder shall submit confirmation on a form provided by the cabinet of having completed the course by July 1, 1991, except person's licensed under KRS Chapters 314 and 327 for whom the completion date shall be July 1, 1992.

214.615. Required educational course on transmission, control, treatment, and prevention of AIDS. - (1) As of July 1, 1991, the cabinet shall require as a condition of granting a license under the chapters specified in KRS 311.450, 311.601, 312.175, 313.080, 313.305, 314.073, 315.065, 320.280, 327.050, 333.190, and 335.150 that an applicant making initial application for licensure complete an educational course approved by the cabinet on the transmission, control, treatment and prevention of the human immunodeficiency virus and acquired immunodeficiency syndrome. An applicant who has not taken a course at the time of licensure shall upon an affidavit showing good cause be allowed six (6) months to complete this requirement.

(2) The cabinet shall have the authority to adopt regulations to carry out the provisions of this section.

(3) The cabinet shall report to the General Assembly by March 1 of each year, as to the implementation and compliance with the requirements of this section.

214.620. Planning for implementation of professional education requirement - Information and education requirements for certain groups. - (1) The boards of the professions in KRS 311.450, 311.601, 312.175, 313.080, 313.305, 314.073, 315.065, 320.280, 327.050, 333.190, 335.150, 311.571, 312.085, 313.040, 313.290, 314.041, 314.042, 314.051, 315.050, 320.250, 327.050, 333.100, 335.080, 335.090, and 335.100 and the Cabinet for Human Resources shall begin planning for the implementation of those sections listed above which require, as a part of initial licensure, applicants for certain specified professions to complete an educational course on the transmission, control, treatment, and prevention of human immunodeficiency virus and acquired immunodeficiency syndrome. The planning shall include collecting information from the facilities and programs which educate and train the licensed professionals affected by the licensure requirements of those sections listed above and shall also include developing administrative regulations for the implementation of the licensure requirements.

(2) The Cabinet for Human Resources shall develop instructional material on the human immunodeficiency virus, including information related -to methods of transmission, education, and infection control. The materials developed under this section shall be provided to persons licensed under KRS Chapters 317 and 317A. Costs of production and distribution of the instructional materials shall be wholly assumed from the fees assessed by the licensing boards which regulate the professionals who are provided with educational materials under this section. To

expeditiously and economically develop, produce, and distribute the instructional material required under this section, the Cabinet for Human Resources shall consult with the professional associations of professions to determine whether suitable instructional materials already exist that may be lawfully reproduced or reprinted.

(3) The Cabinet for Human Resources shall require that, by July 1, 1992, all employees of health facilities defined in KRS 216B.015 shall have completed an educational course on the transmission, control, treatment and prevention of the human immunodeficiency virus and acquired immunodeficiency syndrome with an emphasis on appropriate behavior and attitude change except for those employees who shall have completed such a course as required for their professional licensure or upon evidence that the employee received such a course from another health facility where the employee was previously employed.

(4) Information on the human immunodeficiency virus infection shall be presented to any person who receives treatment at any hospital, however named, skilled nursing facilities, primary care centers, rural health clinics, outpatient clinics, ambulatory care facilities, ambulatory surgical centers, and emergency care centers licensed pursuant to KRS Chapter 216B. The information shall include, but not be limited to, methods of transmission and prevention and appropriate behavior and attitude change.

214.625. Legislative findings - Consent for medical procedures and tests including HIV infection - Physician's responsibility - Confidentiality of results - Exceptions - Disclosure - Network of voluntary HIV testing programs. - (1) The General Assembly finds that the use of tests designed to reveal a condition indicative of human immunodeficiency virus (HIV) infection can be a valuable tool in protecting the public health. The General Assembly finds that despite current scientific knowledge that zidovudine (AZT) prolongs the lives of acquired immunodeficiency syndrome victims, and may also be effective when introduced in the early stages of human immunodeficiency virus infection, many members of the public are deterred from seeking testing because they misunderstand the nature of the test or fear that test results will be disclosed without their consent. The General Assembly finds that the public health will be served by facilitating informed, voluntary, and confidential use of tests designed to detect human immunodeficiency virus infection.

(2) A person who has signed a general consent form for the performance of medical procedures and tests, is not required to also sign or be presented with a specific consent form relating to medical procedures or tests to determine human

immunodeficiency virus infection, antibodies to human immunodeficiency virus, or infection with any other causative agent of acquired immunodeficiency syndrome that will be performed on the person during the time in which the general consent form is in effect. However, a general consent form shall instruct the patient that as part of the medical procedures or tests, the patient may be tested for human immunodeficiency virus infection, hepatitis, or any other blood-borne infectious disease if a doctor orders the test for diagnostic purposes. Except as otherwise provided in subsection (5)(c) of this section, the results of a test or procedure to determine human immunodeficiency virus infection, antibodies to human immunodeficiency virus, or infection with any probable causative agent of acquired immunodeficiency syndrome performed under the authorization of a general consent form shall be used only for diagnostic or other purposes directly related to medical treatment.

(3) In any emergency situation where informed consent of the patient cannot reasonably be obtained before providing health care services, there is no requirement that a health care provider obtain a previous informed consent.

(4) The physician who orders the test pursuant to subsections (1) and (2) of this section, or the attending physician, shall be responsible for informing the patient of the results of the test if the test results are positive for human immunodeficiency virus infection. If the tests are positive, the physician shall also be responsible for either:

(a) Providing information and counseling to the patient concerning his infection or diagnosis and the known medical implications of such status or condition; or

(b) Referring the patient to another appropriate professional or health care facility for the information and counseling.

(5)(a) No person in this state shall perform a test designed to identify the human immunodeficiency virus, or its antigen or antibody, without first obtaining the informed consent of the person upon whom the test is being performed, except as specified in subsections (2) and (3) of this section.

(b) No test result shall be determined as positive, and no positive test result shall be revealed to any person, without corroborating or confirmatory tests being conducted.

(c) No person, who has obtained or has knowledge of a test result pursuant to this section, shall disclose or be compelled to disclose the identity of any person upon whom a test is performed, or the results of the test in a manner which permits identification of the subject of the test, except to the

following persons:

1. The subject of the test or the subject's legally authorized representative;
2. Any person designated in a legally effective release of the test results executed prior to or after the test by the subject of the test or the subject's legally authorized representative;
3. A physician, nurse, or other health care personnel who has a legitimate need to know the test result in order to provide for his protection and to provide for the patient's health and welfare;
4. Health care providers consulting between themselves or with health care facilities to determine diagnosis and treatment.
5. The cabinet, in accordance with rules for reporting and controlling the spread of disease, as otherwise provided by state law;
6. A health facility or health care provider which procures, processes, distributes, or uses:
 - a. A human body part from a deceased person, with respect to medical information regarding that person; or
 - b. Semen provided prior to the effective date of this section for the purpose of artificial insemination;
7. Health facility staff committees, for the purposes of conducting program monitoring, program evaluation, or service reviews;
8. Authorized medical or epidemiological researchers who shall not further disclose any identifying characteristics or information;
9. A person allowed access by a court order which is issued in compliance with the following provisions:
 - a. No court of this state shall issue an order to permit access to a test for human immunodeficiency virus performed in a medical or public health setting to any person not authorized by this section or by KRS 214.420. A court may order an individual to be tested for human immunodeficiency virus only if the person seeking the test results has demonstrated a compelling need for the test results which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for testing and disclosure against the privacy interest of the test subject and the public interest which may be disserved by disclosure which deters blood, organ, and semen donation and future human immunodeficiency virus-related testing or which may lead to discrimination. This paragraph shall not apply to blood bank donor records;
 - b. Pleadings pertaining to disclosure of test results shall substitute a pseudonym for the true name of the subject of the test. The disclosure to the parties of the subject's true name

shall be communicated confidentially, in -documents not filed with the court;

c. Before granting any order, the court shall provide the individual whose test result is in question with notice and a reasonable opportunity to participate in the proceedings if he is not already a party;

d. Court proceedings as to disclosure of test results shall be conducted in -camera, unless the subject of the test agrees to a hearing in open court or unless the court determines that a public hearing is necessary to the public interest and the proper administration of justice;

e. Upon the issuance of an order to disclose test results, the court shall impose appropriate safeguards against unauthorized disclosure, which shall specify the persons who may have access to the information, the purposes for which the information shall be used, and appropriate prohibitions on future disclosure.

No person to whom the results of a test have been disclosed shall disclose the test results to another person except as authorized by this subsection. When disclosure is made pursuant to this subsection, it shall be accompanied by a statement in writing which includes the following or substantially similar language:

"This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of such information without the specific written consent of the person to whom such information pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is NOT sufficient for this purpose."

An oral disclosure shall be accompanied by oral notice and followed by a written notice within ten (10) days.

(6)(a) The Cabinet for Human Resources shall establish a network of voluntary human immunodeficiency virus testing programs in every county in the state. These programs shall be conducted in each public health department established under the provisions of KRS Chapter 211. Additional programs may be contracted to other private providers to the extent that finances permit and local circumstances dictate;

(b) Each public health department shall have the ability to provide counseling and testing for the human immunodeficiency virus to each patient who receives services and shall offer the testing on a voluntary basis to each patient who requests the test;

(c) Each public health department shall provide a program of counseling and testing for human immunodeficiency virus infection, on an anonymous or confidential basis, dependent on the patient's desire. The cabinet shall continue to provide for

anonymous testing and counseling;

(d) The result of a serologic test conducted under the auspices of the cabinet shall not be used to determine if a person may be insured for disability, health, or life insurance or to screen or determine suitability for, or to discharge a person from, employment. Any person who violates the provisions of this subsection shall be guilty of a Class A misdemeanor.

(7) No public health department and no other person in this state shall conduct or hold themselves out to the public as conducting a testing program for acquired immunodeficiency syndrome, acquired immunodeficiency syndrome related complex, or human immunodeficiency virus status without first registering with the cabinet, complying with all other applicable provisions of state law, and meeting the following requirements:

(a) The program shall be directed by a person who has completed an educational course approved by the cabinet in the counseling of persons with acquired immunodeficiency syndrome, acquired immunodeficiency syndrome related complex, or human immunodeficiency virus infection;

(b) The program shall have all medical care supervised by a physician licensed under the provisions of KRS Chapter 311;

(c) The program shall have all laboratory procedures performed in a laboratory licensed under the provisions of KRS Chapter 333;

(d) Informed consent shall be required prior to testing. Informed consent shall be preceded by an explanation of the test, including its purpose, potential uses, and limitations and the meaning of its results;

(e) The program, unless it is a blood donor center, shall provide pretest counseling on the meaning of a test for human immunodeficiency virus, including medical indications for the test; the possibility of false positive or false negative results; the potential need for confirmatory testing; the potential social, medical, and economic consequences of a positive test result; and the need to eliminate high-risk behavior:

(f) The program shall provide supplemental corroborative testing on all positive test results before the results of any positive test is provided to the patient;

(g) The program shall provide post-test counseling, in person, on the meaning of the test results; the possible need for additional testing; the social medical, and economic consequences of a positive test result; and the need to eliminate behavior which might spread the disease to others;

(h) Each person providing post-test counseling to a patient with a positive test result shall receive specialized training, to be specified by regulation of the cabinet, about the special needs

of persons with positive results, including recognition of possible suicidal behavior, and shall refer the patient for further health and social services as appropriate;

(i) When services are provided for a charge during pretest counseling, testing, supplemental testing, and post-test counseling, the program shall provide a complete list of all charges to the patient and the cabinet;

(j) Nothing in this subsection shall be construed to require a facility licensed under KRS Chapter 333 or a person licensed under the provisions of KRS Chapters 311, 312 or 313 to register with the cabinet if he does not advertise or hold himself out to the public as conducting testing programs for human immunodeficiency virus infection or specializing in such testing.

(8) Any violation of this section by a licensed health care provider shall be a ground for disciplinary action contained in the professional's respective licensing chapter.

(9) Except as provided in subsection (6)(d) of this section and KRS 304.12-013, insurers and others participating in activities related to the insurance application and underwriting process shall be exempt from this section.

(10) The cabinet shall develop a program standards consistent with the provisions of this section for counseling and testing persons for the human immunodeficiency virus.

214.630. Payment of costs. - (1) If the defendant is able to pay, he shall pay all fees and costs associated with this action.

(2) If the defendant is found by the court to be indigent, all fees and costs shall be waived and defendant shall be represented by an attorney from, or under contract to the Department of Public Advocacy.

214.635. Estimate of AIDS and HIV infection impact on state spending for health. - The cabinet, on an annual basis, shall estimate the potential impact of acquired immunodeficiency syndrome and human immunodeficiency virus infection on total state spending for health.

304.12-013. Prohibited unfair or deceptive practices in the writing of insurance. - (1) The purpose of this section is to prohibit unfair or deceptive practices in the transaction of life and health insurance with respect to the human immunodeficiency virus infection and related matters. This section applies to all life and health insurance contracts which are delivered or issued for delivery in Kentucky on or after July 13, 1990.

(2) This section shall not prohibit an insurer from contesting the validity of an insurance contract or whether a claim is

covered under an insurance contract to the extent allowed by law.

(3) As used in this section:

(a) "Human immunodeficiency virus (HIV)" means the causative agent of acquired immunodeficiency syndrome (AIDS) or any other type of immunosuppression caused by the human immunodeficiency virus.

(b) "Insurance contract" means a contract issued by an insurer as defined in this section; and

(c) "Insurer" means an insurer, a nonprofit hospital, medical-surgical, dental, and health service corporation, a health maintenance organization, or a prepaid dental plan organization.

(4)(a) In the underwriting of an insurance contract regarding human immunodeficiency virus infection and health conditions derived from such infection, the insurer shall utilize medical tests which are reliable predictors of risk. Only a test which is recommended by the Centers for Disease Control or by the Food and Drug Administration is deemed to be reliable for the purposes of this section. If a specific Centers for Disease Control or Food and Drug Administration recommended test indicates the existence or possible existence of human immunodeficiency virus infection or a health condition related to the human immunodeficiency virus infection, before relying on a single test to deny issuance of an insurance contract, limit coverage under an insurance contract, or to establish the premium for an insurance contract, the insurer shall follow the applicable Centers for Disease Control or Food and Drug Administration recommended test protocol and shall utilize any applicable Centers for Disease Control or Food and Drug Administration recommended follow-up tests or series of tests to confirm the indication.

(b) Prior to testing, the insurer shall disclose in writing its intent to test the applicant for the human immunodeficiency virus infection or for a specific health condition derived therefrom and shall obtain the applicant's written informed consent to administer the test. Written informed consent shall include a fair explanation of the test, including its purpose, potential uses and limitations, the meaning of its results, and the right to confidential treatment of information. Use of a form prescribed by the department shall raise a conclusive presumption of informed consent.

(c) An applicant shall be notified of a positive test result by a physician designated by the applicant, or, in the absence of such designation, by the Cabinet for Human Resources. The notification shall include:

1. Face-to-face post test counseling on the meaning of the test results, the possible need for additional testing, and the need to eliminate behavior which might spread the disease to others;

2. The availability in the geographic area of any appropriate health care services, including mental health care, and appropriate social and support services;

3. The benefits of locating and counseling any person by whom the infected person may have been exposed to human immunodeficiency virus and any person whom the infected person may have exposed to the virus; and

4. The availability, if any, of the services of public health authorities with respect to locating and counseling any person described in subparagraph 3 of this paragraph.

(d) A medical test for human immunodeficiency virus infection or for a health condition derived from the infection shall only be required or given to an applicant for an insurance contract on the basis of the applicant's health condition or health history, on the basis of the amount of insurance applied for, or if the test is required of all applicants.

(e) An insurer may ask whether an applicant for an insurance contract has been tested positive for human immunodeficiency virus infection or other health conditions derived from such infection. Insurers shall not inquire whether the applicant has been tested for or has received a negative result from a specific test for human immunodeficiency virus infection or for a health condition derived from such infection.

(f) Insurers shall maintain strict confidentiality of the results of tests for human immunodeficiency virus infection or a specific health condition derived from human immunodeficiency virus infection. Information regarding specific test results shall be disclosed only as required by law or pursuant to a written request or authorization by the applicant. Insurers may disclose results pursuant to a specific written request only to the following persons:

1. The applicant;

2. A licensed physician or other person designated by the applicant;

3. An insurance medical information exchange under procedures that are used to assure confidentiality, such as the use of general codes that also cover results of tests for other diseases or conditions not related to human immunodeficiency virus infection;

4. For the preparation of statistical reports that do not disclose the identity of any particular applicant;

5. Reinsurers contractually retained medical personnel, and insurer affiliates if these entities are involved solely in the underwriting process and under procedures that are designed to assure confidentiality;

6. To insurer personnel who have the responsibility to make

underwriting decisions; and

7. To outside legal counsel who needs the information to represent the insurer effectively in regard to matters concerning the applicant.

(g) Insurers shall use for the processing of human immunodeficiency virus related tests only those laboratories that are certified by the United States Department of Health and Human Services under the Clinical Laboratory Improvement Act of 1967, which permit testing of specimens in interstate commerce, and which subject themselves to ongoing proficiency testing by the College of American Pathologists, the American Association of Bio Analysts, or an equivalent program approved by the Centers for Disease Control.

(5)(a) An insurance contract shall not exclude coverage for human immunodeficiency virus infection. An insurance contract shall not contain benefit provisions, terms, or conditions which apply to human immunodeficiency virus infection in a different manner than those which apply to any other health condition. Insurance contracts which violate this paragraph shall be disapproved by the commissioner pursuant to KRS 304.14-130(11(a), 304.32-160, 304.38-050. and 304.43-030.

(b) A health insurance contract shall not be canceled or nonrenewed solely because a person or persons covered by the contract has been diagnosed as having or has been treated for human immunodeficiency virus infection.

(c) Sexual orientation shall not be used in the underwriting process or in the determination of which applicants shall be tested for exposure to the human immunodeficiency virus infection. Neither the marital status, the living arrangements, the occupation, the gender, the beneficiary designation, nor the zip code or other territorial classification of an applicant's sexual orientation.

/* The final sentence is missing a verb or two, but we have verified that this is what the Kentucky legislature passed. */

(d) This subsection does not prohibit the issuance of accident only for specified disease insurance contracts.

311.281. Testing of organs, skin, or other human tissue for HIV and other communicable diseases, with informed consent. -(1) Every donation of organs, skins, or other human tissue for transplantation to another shall be tested by the agency responsible for procuring the organ, skin, or other human tissue prior to use for human immunodeficiency virus infection and other communicable diseases specified by the United Network for Organ Sharing, American Association of Tissue Banks, and Eye Bank Association of America. Tests for the human immunodeficiency

virus infection shall be performed only after obtaining written, informed consent from the potential donor or the donor's legal representative. Obtaining consent shall include a fair explanation of the procedures to be followed and the meaning and use of the test results. The explanation shall include a description of the confidential nature of the test as described in KRS 214.625. If consent for testing is not given, the person shall not be accepted as a donor.

(2) Notwithstanding the provisions of subsection (1) of this section, written informed consent to perform testing shall not be required if the organ, skin, or other human tissue is received for processing or testing from out-of-state or if tissue is received from a health care facility or health care provider for reference testing or processing and the results of the test are reported back to the facility or provider.

(3) No person shall collect any organ, skin, or other human tissue from one (1) human being and hold it for, or actually perform, any implantation, transplantation, grafting, or any other method of transfer to another human being without first testing the tissue for the human immunodeficiency virus and other communicable diseases specified by the United Network for Organ Sharing, American Association of Tissue Banks, and Eye Bank Association of America, or without performing another process approved by the United Network for Organ Sharing, American Association of Tissue Banks, and Eye Bank Association of America capable of killing the causative agent of those diseases.

(4) All human organs, skin, or other human tissue which is to be transplanted to another and is found positive for human immunodeficiency virus or other communicable disease specified by the United Network for Organ Sharing, American Association of Tissue Banks, and Eye Bank Association of America shall be rendered noncommunicable by the person holding the tissue or shall be destroyed, unless the human tissue is specifically labeled to identify the human immunodeficiency virus and:

- (a) Is used for research purposes; or
- (b) Is used to save the life of another and is transferred with the recipient's informed consent.

(5) Each agency which procures organs, skin, or other human tissue, who finds evidence after confirmatory testing of human immunodeficiency virus in the donor, shall notify the donor or legal representative. If the donor is a patient of a health facility within the Commonwealth, the following information shall be given:

- (a) The meaning of the test results;
- (b) Measures for the prevention of the transmission of the human immunodeficiency virus;

- (c) The availability in the geographic area of any appropriate health care services, including mental health care, and appropriate social and support services;
 - (d) The benefits of locating and counseling any individual by whom the infected individual may have been exposed to human immunodeficiency virus and any individual whom the infected individual may have exposed to the virus; and
 - (e) The availability, if any, of the services of public health authorities with respect to locating and counseling any individual described in paragraph()of this subsection.
- (6) The donor shall be notified of the confirmed positive test results in person. Persons shall be notified of negative test results either in person, by registered mail, or by phone. Notification is the responsibility of the agency responsible for procuring skin, organs, or other donated tissue. Notification shall be the responsibility of the agency responsible for procuring skin, organs, or other donated tissue.
- (7) Prior to the transplant of an organ or artificial insemination, the institution or physician responsible for overseeing the procedure shall provide the prospective recipient information as to the risks of contracting human immunodeficiency virus.

311.282. Disclosure or failure to disclose confidential information under specified circumstances not to create civil or criminal liability. - (1) A physician licensed pursuant to KRS Chapter 311 shall not be civilly or criminally liable for the disclosure of otherwise confidential information under the following circumstances:

- (a) If a patient of the physician has tested positive for human immunodeficiency virus discloses to the physician the identity of a spouse or sexual partner with whom the patient has cohabitated for more than one (1) year; and
 - (b) The physician recommends the patient notify the spouse or sexual partner of the positive test and refrain from engaging in sexual activity in a manner likely to transmit the virus and the patient refuses; and
 - (c) If, pursuant to a perceived civil duty or the ethical guidelines of the profession, the physician reasonably and in good faith advises the spouse of the patient or sexual partner with whom the patient has cohabitated for more than one (1) year of the positive test and facts concerning the transmission of the virus.
- (2) Notwithstanding the foregoing, a physician licensed pursuant to KRS Chapter 311 shall not be civilly or criminally liable for failure to disclose information relating to a positive test

result for human immunodeficiency virus of a patient to a spouse. (Enact. Acts 1990, ch. 443, 47, effective July 13, 1990.)

PARAMEDICS

311.653. Education course concerning AIDS required for certification. - The board of medical licensure shall, by regulation, require an applicant for certification as a paramedic to have completed a Cabinet for Human Resources approved educational course on the transmission, control, treatment and prevention of the human immunodeficiency virus and acquired immunodeficiency syndrome with an emphasis on appropriate behavior and attitude change.

311.654. Rules and regulations. - (1) The board of medical licensure shall adopt rules and regulations relating to paramedics. The regulations may include, but need not be limited to, the classification and certification of paramedics, instructor-trainers, instructors, and students and trainees; examinations; standards of training and experience; curricula standards; administration of drugs and controlled substances by paramedics under the direction or supervision of licensed physicians; issuance, renewal, suspension, denial, and revocation of certificates, and such other reasonable standards or regulations as may be necessary for the protection of public health and safety in the delivery of emergency medical services. (2) Any continuing education required by the board of medical licensure shall include a Cabinet for Human Resources approved educational course on the transmission, control, treatment, and prevention of the human immunodeficiency virus and acquired immunodeficiency syndrome with an emphasis on appropriate behavior and attitude change.

510.320. Human immunodeficiency virus testing for defendants accused of certain sexual offenses- Results - Counseling when test positive - Cost - Effect of appeal. - (1) For purposes of this section, "human immunodeficiency virus test" means a test of an individual for presence of human immunodeficiency virus, or for antibodies or antigens that result from human immunodeficiency virus infection, or for an other substance specifically indicating human immunodeficiency virus in infection.

(2) A defendant charged with an offense pursuant to this chapter which has sexual intercourse or deviate sexual intercourse as an element, or has sexual contact as an element when the circumstances of the case demonstrate a possibility of transmission of human immunodeficiency virus, shall upon initial

court appearance on the charge, be informed by the judge of the availability of human immunodeficiency virus testing. The judge shall also notify the victim of the offense, or parent or guardian of the victim, that the defendant has been so notified.

(3) When a defendant has been convicted of any offense in subsection (2) of this section, other provisions of law to the contrary notwithstanding, the sentencing court, regardless of any prior human immunodeficiency virus test, shall order the defendant to undergo a human immunodeficiency virus test, under the direction of the Cabinet for Human Resources.

(4)(a) The result of any human immunodeficiency virus test conducted pursuant to this section shall not be a public record for purposes of KRS chapter 61.

(b) The result of any human immunodeficiency virus test conducted pursuant to this section shall only be made available by the Cabinet for Human Resources to the victim, or the parent or guardian of a victim who is a minor or is mentally retarded or mentally incapacitated, the defendant, the court issuing the order for testing and to any other agency as directed pursuant to KRS Chapter 214.

(c) In addition, the Cabinet for Human Resources shall provide to the Department of Corrections the result of any human immunodeficiency virus test conducted pursuant to this section which indicates that the defendant is infected with the human immunodeficiency virus. The Department of Corrections shall use this information solely for the purpose of providing medical treatment to the defendant while incarcerated in a state penitentiary or correctional institution or county jail.

(5) If the human immunodeficiency virus test indicates the presence of human immunodeficiency virus infection, the Cabinet for Human Resources shall provide counseling to the victim and the defendant regarding human immunodeficiency virus disease, and referral for appropriate health care and support services.

(6) The cost of testing under this section shall be paid by the defendant tested, unless the court has determined the defendant to be indigent.

(7) Filing of a notice of appeal shall not automatically stay an order that the defendant submit to a human immunodeficiency virus test.

529.090. Persons convicted required to submit to screening for HIV infections - Prostitution or procuring prostitution with knowledge of sexually transmitted disease or HIV. - (1) Any person convicted of prostitution or procuring another to commit prostitution under the provisions of KRS 529.020 shall be required to undergo screening for human immunodeficiency virus

infection under direction of the Cabinet for Human Resources and, if infected, shall submit to treatment and counseling as a condition of release from probation, community control, or incarceration. Notwithstanding the provisions of KRS 214.420, the results of any test conducted pursuant to this subsection shall be made available by the Cabinet for Human Resources to medical personnel, appropriate state agencies, or courts of appropriate jurisdiction to enforce the provisions of this chapter.

(2) Any person who commits prostitution and who, prior to the commission of the crime, had tested positive for a sexually transmitted disease and knew or had been informed that he had tested positive for a sexually transmitted disease pursuant to KRS 214.410 and that he could possibly communicate such disease to another person through sexual activity is guilty of a Class A misdemeanor. A person may be convicted and sentenced separately for a violation of this subsection and for the underlying crime of prostitution.

(3) Any person who commits, offers, or agrees to commit prostitution by engaging in sexual activity in a manner likely to transmit the human immunodeficiency virus and who, prior to the commission of the crime, had tested positive for human immunodeficiency virus and knew or had been informed that he had tested positive for human immunodeficiency virus and that he could possibly communicate the disease to another person through sexual activity is guilty of a Class D felony. A person may be convicted and sentenced separately for a violation of this subsection and for the underlying crime of prostitution.

(4) Any person convicted of procuring another to commit prostitution in a manner likely to transmit the human immunodeficiency virus and who, prior to the commission of the crime, had tested positive for human immunodeficiency virus and knew or had been informed that he had tested positive for human immunodeficiency virus and that he could possibly communicate the disease to another person through sexual activity is guilty of a Class D felony.