

APRIL 11, 1991

CONCURRED IN.

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 917
 2 INTRODUCED BY Torh Winters McCaughy Cobb
 3 BY REQUEST OF THE DEPARTMENT OF Russell Spina
 4 HEALTH AND ENVIRONMENTAL SCIENCES

5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 7 AIDS PREVENTION ACT; CHANGING THE DEFINITION OF "HEALTH CARE
 8 PROVIDER" TO CONFORM WITH THE UNIFORM HEALTH CARE
 9 INFORMATION ACT; CLARIFYING THE KIND OF COUNSELING THAT A
 10 HEALTH CARE PROVIDER IS REQUIRED TO GIVE IN ADMINISTERING AN
 11 HIV-RELATED TEST; ALLOWING NEXT-OF-KIN, A SIGNIFICANT OTHER,
 12 OR A DESIGNATED INDIVIDUAL TO CONSENT TO AN HIV-RELATED TEST
 13 ADMINISTERED TO AN UNCONSCIOUS OR MENTALLY INCAPACITATED
 14 PERSON; ESTABLISHING THAT AN ORDER TO PERFORM AN HIV-RELATED
 15 TEST ALSO CERTIFIES THAT PRIOR INFORMED CONSENT WAS
 16 OBTAINED; REQUIRING A HEALTH CARE PROVIDER WHO DOES NOT
 17 PROVIDE HIV-RELATED TESTS ON AN ANONYMOUS BASIS TO INFORM
 18 ALL THOSE WISHING TO BE TESTED THAT ANONYMOUS TESTING IS
 19 AVAILABLE ELSEWHERE; REQUIRING THE SUBJECT OF AN HIV-RELATED
 20 TEST TO DESIGNATE A HEALTH CARE PROVIDER TO RECEIVE THE
 21 RESULTS OF THE TEST; REQUIRING INSURANCE COMPANIES TO INFORM
 22 APPLICANTS OF POSITIVE HIV TEST RESULTS AND ALLOW THEM
 23 ACCESS TO NEGATIVE HIV TEST RESULTS; CLARIFYING WHEN CONSENT
 24 TO A TEST MAY BE WITHDRAWN AND WHEN IT IS NOT REQUIRED;
 25 ALLOWING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

1 TO ADOPT STANDARDS FOR HIV-RELATED TESTING OF ORGAN, TISSUE,
 2 AND SEMEN DONORS; CLARIFYING WHEN THE IDENTITY OF THE
 3 SUBJECT OF AN HIV-RELATED TEST AND TEST RESULTS MAY BE
 4 DISCLOSED BY GOVERNMENT HEALTH CARE WORKERS; REVISING THE
 5 UNIFORM HEALTH CARE INFORMATION ACT TO ALLOW HEALTH CARE
 6 PROVIDERS TO RELEASE HEALTH CARE INFORMATION WITHOUT CONSENT
 7 WHEN DISCLOSURE WILL AVOID OR MINIMIZE DANGER TO THE HEALTH
 8 OR SAFETY OF A PERSON; MAKING IT A MISDEMEANOR FOR A PERSON
 9 TO UNLAWFULLY DISCLOSE CONFIDENTIAL HEALTH CARE INFORMATION;
 10 INCREASING THE CIVIL PENALTIES FOR VIOLATION OF THE AIDS
 11 PREVENTION ACT; AMENDING SECTIONS 50-16-529, 50-16-1003,
 12 50-16-1007, 50-16-1008, 50-16-1009, AND 50-16-1013, MCA; AND
 13 PROVIDING AN EFFECTIVE DATE."

STATEMENT OF INTENT

14
 15
 16 A statement of intent is required for this bill because
 17 [section 3] gives authority to the department of health and
 18 environmental sciences to adopt rules setting standards that
 19 must be met before donation of an organ, semen, or tissues
 20 in order to prevent transmission of the virus causing
 21 acquired immune deficiency syndrome (AIDS). It is intended
 22 that the department adopt nationally accepted standards that
 23 are developed for each type of donation and that are
 24 apparently most effective in preventing transmission of the
 25 virus.



1
2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

3 **Section 1.** Section 50-16-1003, MCA, is amended to read:

4 "50-16-1003. Definitions. As used in this part, the
5 following definitions apply:

6 (1) "AIDS" means acquired immune deficiency syndrome as
7 further defined by the department in accordance with
8 standards promulgated by the centers for disease control of
9 the United States public health service.

10 (2) "Contact" means:

11 (a) an individual identified by the subject of an
12 HIV-related test as a past or present sexual partner or as a
13 person with whom the subject has shared hypodermic needles
14 or syringes; or

15 (b) any other person who has been exposed to the test
16 subject in a manner, voluntary or involuntary, that may
17 allow HIV transmission.

18 (3) "Department" means the department of health and
19 environmental sciences provided for in 2-15-2101.

20 (4) "HIV" means the human immunodeficiency virus,
21 identified as the causative agent of AIDS, and all HIV and
22 HIV-related viruses that damage the cellular branch of the
23 human immune or neurological systems and leave the infected
24 person immunodeficient or neurologically impaired.

25 (5) "HIV-related condition" means a chronic disease

1 resulting from infection with HIV, including but not limited
2 to AIDS and asymptomatic seropositivity for HIV.

3 (6) "HIV-related test" means a laboratory test approved
4 by the federal food and drug administration, including but
5 not limited to an enzyme immunoassay and a western blot,
6 that is designed to detect the presence of HIV or antibodies
7 to HIV.

8 (7) "Health care facility" means a health care
9 institution, private or public, including but not limited to
10 a hospital, nursing home, clinic, blood bank, blood center,
11 sperm bank, or laboratory.

12 (8) "Health care provider" means a physician,--nurse,
13 paramedic,--psychologist,--dentist,--public-health-department
14 agent,--or--other---person---providing---medical,--nursing,
15 psychological,--or--other--health--care-services-of-any-kind
16 person who is licensed, certified, or otherwise authorized
17 by the laws of this state to provide health care in the
18 ordinary course of business or practice of a profession. The
19 term does not include a person who provides health care
20 solely through the sale or dispensing of drugs or medical
21 devices.

22 (9) "Legal guardian" means a person appointed by a
23 court to assume legal authority for another who has been
24 found incapacitated or, in the case of a minor, a person who
25 has legal custody of the minor.

1 (10) "Local board" means a county, city, city-county, or
2 district board of health.

3 (11) "Local health officer" means a county, city,
4 city-county, or district health officer appointed by the
5 local board.

6 (12) "Next-of-kin" means an individual who is a parent,
7 adult child, grandparent, adult sibling, or legal spouse of
8 a person.

9 ~~(10)~~(13) "Person" means an individual, corporation,
10 organization, or other legal entity.

11 ~~(11)~~(14) "Posttest counseling" means counseling,
12 conducted at the time the HIV-related test results are
13 given, and includes, at a minimum, written materials
14 provided by the department.

15 ~~(12)~~(15) "Pretest counseling" means the provision of
16 ~~written-materials~~ counseling to the subject prior to conduct
17 of an ~~HIV~~ HIV-related test—~~The, including, at a minimum,~~
18 ~~written materials must-be~~ developed and provided by the
19 department.

20 ~~(13)~~(16) "Release of test results" means a written
21 authorization for disclosure of HIV-related test results
22 that:

23 (a) is signed and dated by the person tested or the
24 person authorized to act for the person tested; and that

25 (b) specifies the nature of the information to be

1 disclosed and to whom disclosure is authorized.

2 (17) "Significant other" means an individual living in a
3 current spousal relationship with another individual but who
4 is not legally a spouse of that individual.

5 ~~(14)~~(18) (a) "Written informed consent" means an
6 agreement in writing that is freely executed by the subject
7 of an HIV-related test, or by the subject's legal guardian,
8 or, if there is no legal guardian and the subject is
9 unconscious or otherwise mentally incapacitated, by the
10 subject's next-of-kin, significant other, or a person
11 designated by the subject in hospital records to act on the
12 subject's behalf, and that includes at least the following:

13 (i) an explanation of the test, including its purpose,
14 potential uses, limitations, and the meaning of its results;
15 and

16 (ii) an explanation of the procedures to be followed for
17 confidentiality, blood drawing, and counseling, including
18 notification that the test is voluntary and that consent may
19 be withdrawn at any time until the blood sample is taken;

20 (iii) ~~a-discussion~~ an explanation of whether and to whom
21 the subject's name and test results may be disclosed; and

22 (iv) a statement that the test may be obtained
23 anonymously if the subject wishes;

24 (v) the name and address of a health care provider whom
25 the subject approves to receive the subject's test results

1 (10) "Local board" means a county, city, city-county, or
 2 district board of health.

3 (11) "Local health officer" means a county, city,
 4 city-county, or district health officer appointed by the
 5 local board.

6 (12) "Next-of-kin" means an individual who is a parent,
 7 adult child, grandparent, adult sibling, or legal spouse of
 8 a person.

9 (13) "Person" means an individual, corporation,
 10 organization, or other legal entity.

11 (14) "Posttest counseling" means counseling,
 12 conducted at the time the HIV-related test results are
 13 given, and includes, at a minimum, written materials
 14 provided by the department.

15 (15) "Pretest counseling" means the provision of
 16 written-materials counseling to the subject prior to conduct
 17 of an HIV HIV-related test, including, at a minimum,
 18 written materials must-be developed and provided by the
 19 department.

20 (16) "Release of test results" means a written
 21 authorization for disclosure of HIV-related test results
 22 that:

23 (a) is signed and dated by the person tested or the
 24 person authorized to act for the person tested; and that

25 (b) specifies the nature of the information to be

1 disclosed and to whom disclosure is authorized.

2 (17) "Significant other" means an individual living in a
 3 current spousal relationship with another individual but who
 4 is not legally a spouse of that individual.

5 (18) (a) "Written informed consent" means an
 6 agreement in writing that is freely executed by the subject
 7 of an HIV-related test, or by the subject's legal guardian,
 8 or, if there is no legal guardian and the subject is
 9 unconscious or otherwise mentally incapacitated, by the
 10 subject's next-of-kin, significant other, or a person
 11 designated by the subject in hospital records to act on the
 12 subject's behalf, and that includes at least the following:

13 (i) an explanation of the test, including its purpose,
 14 potential uses, limitations, and the meaning of its results;
 15 and

16 (ii) an explanation of the procedures to be followed for
 17 confidentiality, blood drawing, and counseling, including
 18 notification that the test is voluntary and that consent may
 19 be withdrawn at any time until the blood sample is taken;

20 (iii) a-discussion an explanation of whether and to whom
 21 the subject's name and test results may be disclosed; and

22 (iv) a statement that the test may be obtained
 23 anonymously if the subject wishes;

24 (v) the name and address of a health care provider whom
 25 the subject approves to receive the subject's test results

1 and to provide the subject with posttest counseling; and

2 (vi) if the consent is for a test being performed as
 3 part of an application for insurance, a statement that only
 4 a positive test result will be reported to the designated
 5 health care provider and that negative test results may be
 6 obtained by the subject from the insurance company.

7 (b) The department shall develop a form agreement that
 8 may be used for purposes of this subsection."

9 **Section 2.** Section 50-16-1007, MCA, is amended to read:

10 **"50-16-1007. Testing -- counseling -- informed consent**
 11 **-- penalty. (1) ~~A person may not request an~~ An HIV-related**
 12 **test ~~without--first~~ may be ordered only by a health care**
 13 **provider and only after receiving the written informed**
 14 **consent of:**

15 (a) the subject of the test; or

16 (b) the subject's legal guardian;

17 (c) the subject's next-of-kin or significant other if:

18 (i) the subject is unconscious or otherwise mentally
 19 incapacitated;

20 (ii) there is no legal guardian;

21 (iii) there are medical indications of an HIV-related
 22 condition; and

23 (iv) the test is advisable in order to determine the
 24 proper course of treatment of the subject; or

25 (d) the subject's next-of-kin or significant other or

1 the person, if any, designated by the subject in hospital
 2 records to act on the subject's behalf if:

3 (i) the subject is in a hospital; and

4 (ii) the circumstances in subsection (1)(c)(i) through
 5 (iv) exist.

6 (2) ~~A~~ When a health care provider shall certify in
 7 writing orders an HIV-related test, he also certifies that
 8 informed consent has been received prior to requesting
 9 testing. ~~Testing may only be requested by a health care~~
 10 provider ordering an HIV-related test.

11 ~~(2)(3)~~ Prior to executing an informed consent
 12 agreement, Before the subject of the test executes an
 13 informed consent agreement, the health care provider
 14 ordering the test or his designee must give pretest
 15 counseling to:

16 (a) the subject; or

17 (b) the subject's legal guardian must be given pretest
 18 counseling;

19 (c) the subject's next-of-kin or significant other if:

20 (i) the subject is unconscious or otherwise mentally
 21 incapacitated; and

22 (ii) there is no guardian; or

23 (d) the subject's next-of-kin or significant other or
 24 the person, if any, designated by the subject in hospital
 25 records to act on the subject's behalf if:

1 (i) the subject is in the hospital; and
 2 (ii) the circumstances in subsection (1)(c)(i) and (ii)
 3 exist.

4 {3}(4) A health care provider who does not provide
 5 HIV-related tests on an anonymous basis shall inform a each
 6 person who wishes to be tested anonymously that anonymous
 7 testing is available at one of the counseling-testing sites
 8 established by the department elsewhere.

9 {4}(5) The subject of an HIV-related test or any of the
 10 subject's representatives authorized by subsection (1) to
 11 act in the subject's stead shall designate, as part of his
 12 written informed consent, a health care provider to receive
 13 the results of an HIV-related test. The designated health
 14 care provider must be given to the health care provider
 15 designated by the subject, who shall inform the subject or
 16 the subject's representative of the results in person.

17 {5}(6) At the time the subject of a test or the
 18 subject's representative is given the test results, the
 19 health care provider or the provider's designee shall give
 20 the subject or the subject's representative must be provided
 21 with posttest counseling.

22 (7) If a test is performed as part of an application
 23 for insurance, the insurance company must ensure that:

24 (a) negative results can be obtained by the subject or
 25 his representative upon request; and

1 (b) positive results are returned to the health care
 2 provider designated by the subject or his representative.

3 {6}(8) A minor may consent or refuse to consent to be
 4 the subject of an HIV-related test, pursuant to 41-1-402.

5 {7}(9) Subsections (1) through {5}(6) do not apply to:
 6 (a) the performance of an HIV-related test by a health
 7 care provider or health care facility that procures,
 8 processes, distributes, or uses a human body part donated
 9 for a purpose specified under Title 72, chapter 17, if the
 10 test is necessary to assure medical acceptability of the
 11 gift for the purposes intended;

12 (b) the performance of an HIV-related test for the
 13 purpose of research if the testing is performed in a manner
 14 by which the identity of the test subject is not known and
 15 may not be retrieved by the researcher.

16 (c) the performance of an HIV-related test when:

17 (i) the subject of the test is unconscious or otherwise
 18 mentally incapacitated;

19 (ii) there are medical indications of an HIV-related
 20 condition;

21 (iii) the test is advisable in order to determine the
 22 proper course of treatment of the subject; and

23 (iv) none of the individuals listed in subsections
 24 (1)(b), (1)(c), or (1)(d) exists or is available within 24
 25 hours after the test is determined to be advisable; or

1 (d) the performance of an HIV-related test conducted
 2 pursuant to 50-13-107 or 50-18-108, with the exception that
 3 the pretest and posttest counseling must still be given.

4 ~~(8)~~(10) A knowing or purposeful violation of this
 5 section is a misdemeanor punishable by a fine of \$1,000 or
 6 imprisonment for up to 6 months, or both."

7 **Section 3.** Section 50-16-1008, MCA, is amended to read:

8 "50-16-1008. Testing of donors of organs, tissues, and
 9 semen required -- penalty. (1) ~~Immediately--prior~~ Prior to
 10 donation of an organ, semen, or tissues, HIV-related testing
 11 of a prospective donor, in accordance with nationally
 12 accepted standards adopted by the department by rule, is
 13 required unless the transplantation of an indispensable
 14 organ is necessary to save a patient's life and there is not
 15 sufficient time to perform an HIV-related test.

16 (2) A knowing or purposeful violation of this section
 17 is a misdemeanor punishable by a fine of up to \$1,000 or
 18 imprisonment of up to 6 months, or both."

19 **Section 4.** Section 50-16-1009, MCA, is amended to read:

20 "50-16-1009. Confidentiality of records -- notification
 21 of contacts -- penalty for unlawful disclosure. (1) A Except
 22 as provided in subsection (2), person may not disclose or be
 23 compelled to disclose the identity of a subject of an
 24 HIV-related test or the results of a test in a manner that
 25 permits identification of the subject of the test, except to

1 the extent allowed under the Uniform Health Care Information
 2 Act, Title 50, chapter 16, part 5.

3 (2) A local board, local health officer, or the
 4 department may disclose the identity of the subject of an
 5 HIV-related test or the test results only to the extent
 6 allowed by the Government Health Care Information Act, Title
 7 50, chapter 16, part 6, unless it is in possession of that
 8 information because a health care provider employed by it
 9 provided health care to the subject, in which case the
 10 Uniform Health Care Information Act governs the release of
 11 that information.

12 ~~(2)~~(3) If a health care provider informs the subject of
 13 an HIV-related test that the results are positive, the
 14 provider shall encourage the subject to notify persons with
 15 ~~whom there has been a contact capable of spreading--HIV~~ who
 16 are potential contacts. If the subject is unable or
 17 unwilling to notify all contacts, the health care provider
 18 may ask the subject to disclose voluntarily the identities
 19 of the contacts and to authorize notification of those
 20 contacts by a health care provider. A notification may state
 21 only that the contact may have been exposed to HIV and may
 22 not include the time or place of possible exposure or the
 23 identity of the subject of the test.

24 (4) A person who discloses or compels another to
 25 disclose confidential health care information in violation

1 of this section is guilty of a misdemeanor punishable by a
 2 fine of \$1,000 or imprisonment for 1 year, or both."

3 **Section 5.** Section 50-16-1013, MCA, is amended to read:

4 "50-16-1013. Civil remedy. (1) A person aggrieved by a
 5 violation of this part has a right of action in the district
 6 court and may recover for each violation:

7 (a) against a person who negligently violates a
 8 provision of this part, damages of ~~\$17,000~~ \$5,000 or actual
 9 damages, whichever is greater;

10 (b) against a person who intentionally or recklessly
 11 violates a provision of this part, damages of ~~\$57,000~~ \$20,000
 12 or actual damages, whichever is greater;

13 (c) reasonable attorney fees; and

14 (d) other appropriate relief, including injunctive
 15 relief.

16 (2) An action under this section must be commenced
 17 within 3 years after the cause of action accrues.

18 (3) The department may maintain a civil action to
 19 enforce this part in which the court may order any relief
 20 permitted under subsection (1).

21 (4) Nothing in this section limits the rights of a
 22 subject of an HIV-related test to recover damages or other
 23 relief under any other applicable law or cause of action.

24 (5) Nothing in this part may be construed to impose
 25 civil liability or criminal sanctions for disclosure of an

1 HIV-related test result in accordance with any reporting
 2 requirement for a diagnosed case of AIDS or an HIV-related
 3 condition by the department or the centers for disease
 4 control of the United States public health service."

5 **Section 6.** Section 50-16-529, MCA, is amended to read:

6 "50-16-529. Disclosure without patient's authorization
 7 based on need to know. A health care provider may disclose
 8 health care information about a patient without the
 9 patient's authorization, to the extent a recipient needs to
 10 know the information, if the disclosure is:

11 (1) to a person who is providing health care to the
 12 patient;

13 (2) to any other person who requires health care
 14 information for health care education; to provide planning,
 15 quality assurance, peer review, or administrative, legal,
 16 financial, or actuarial services to the health care
 17 provider; for assisting the health care provider in the
 18 delivery of health care; or to a third-party health care
 19 payor who requires health care information and if the health
 20 care provider reasonably believes that the person will:

21 (a) not use or disclose the health care information for
 22 any other purpose; and

23 (b) take appropriate steps to protect the health care
 24 information;

25 (3) to any other health care provider who has

1 previously provided health care to the patient, to the
2 extent necessary to provide health care to the patient,
3 unless the patient has instructed the health care provider
4 not to make the disclosure;

5 (4) to immediate family members of the patient or any
6 other individual with whom the patient is known to have a
7 close personal relationship, if made in accordance with the
8 laws of the state and good medical or other professional
9 practice, unless the patient has instructed the health care
10 provider not to make the disclosure;

11 (5) to a health care provider who is the successor in
12 interest to the health care provider maintaining the health
13 care information;

14 (6) for use in a research project that an institutional
15 review board has determined:

16 (a) is of sufficient importance to outweigh the
17 intrusion into the privacy of the patient that would result
18 from the disclosure;

19 (b) is impracticable without the use or disclosure of
20 the health care information in individually identifiable
21 form;

22 (c) contains reasonable safeguards to protect the
23 information from improper disclosure;

24 (d) contains reasonable safeguards to protect against
25 directly or indirectly identifying any patient in any report

1 of the research project; and

2 (e) contains procedures to remove or destroy at the
3 earliest opportunity, consistent with the purposes of the
4 project, information that would enable the patient to be
5 identified, unless an institutional review board authorizes
6 retention of identifying information for purposes of another
7 research project;

8 (7) to a person who obtains information for purposes of
9 an audit, if that person agrees in writing to:

10 (a) remove or destroy, at the earliest opportunity
11 consistent with the purpose of the audit, information that
12 would enable the patient to be identified; and

13 (b) not disclose the information further, except to
14 accomplish the audit or to report unlawful or improper
15 conduct involving fraud in payment for health care by a
16 health care provider or patient or other unlawful conduct by
17 a health care provider;--and

18 (8) to an official of a penal or other custodial
19 institution in which the patient is detained; and

20 (9) to any person if the health care provider
21 reasonably believes that disclosure will avoid or minimize
22 an imminent danger to the health or safety of the patient or
23 any other individual."

24 NEW SECTION. Section 7. Effective date. (This act) is
25 effective July 1, 1991.

1 are developed for each type of donation and that are
2 apparently most effective in preventing transmission of the
3 virus.

4
5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

6 **Section 1.** Section 50-16-1003, MCA, is amended to read:

7 **"50-16-1003. Definitions.** As used in this part, the
8 following definitions apply:

9 (1) "AIDS" means acquired immune deficiency syndrome as
10 further defined by the department in accordance with
11 standards promulgated by the centers for disease control of
12 the United States public health service.

13 (2) "Contact" means:

14 (a) an individual identified by the subject of an
15 HIV-related test as a past or present sexual partner or as a
16 person with whom the subject has shared hypodermic needles
17 or syringes; or

18 (b) any other person who has been exposed to the test
19 subject in a manner, voluntary or involuntary, that may
20 allow HIV transmission IN ACCORDANCE WITH MODES OF
21 TRANSMISSION RECOGNIZED BY THE CENTER FOR DISEASE CONTROL OF
22 THE UNITED STATES PUBLIC HEALTH SERVICE.

23 (3) "Department" means the department of health and
24 environmental sciences provided for in 2-15-2101.

25 (4) "HIV" means the human immunodeficiency virus,

1 identified as the causative agent of AIDS, and all HIV and
2 HIV-related viruses that damage the cellular branch of the
3 human immune or neurological systems and leave the infected
4 person immunodeficient or neurologically impaired.

5 (5) "HIV-related condition" means a chronic disease
6 resulting from infection with HIV, including but not limited
7 to AIDS and asymptomatic seropositivity for HIV.

8 (6) "HIV-related test" means a laboratory test approved
9 by the federal food and drug administration, including but
10 not limited to an enzyme immunoassay and a western blot,
11 that is designed to detect the presence of HIV or antibodies
12 to HIV.

13 (7) "Health care facility" means a health care
14 institution, private or public, including but not limited to
15 a hospital, nursing home, clinic, blood bank, blood center,
16 sperm bank, or laboratory.

17 (8) "Health care provider" means a physician, nurse,
18 paramedic, psychologist, dentist, public health department
19 agent, or other person providing medical, nursing,
20 psychological, or other health care services of any kind
21 person who is licensed, certified, or otherwise authorized
22 by the laws of this state to provide health care in the
23 ordinary course of business or practice of a profession. The
24 term does not include a person who provides health care
25 solely through the sale or dispensing of drugs or medical

1 devices.

2 (9) "Legal guardian" means a person appointed by a
3 court to assume legal authority for another who has been
4 found incapacitated or, in the case of a minor, a person who
5 has legal custody of the minor.

6 (10) "Local board" means a county, city, city-county, or
7 district board of health.

8 (11) "Local health officer" means a county, city,
9 city-county, or district health officer appointed by the
10 local board.

11 (12) "Next-of-kin" means an individual who is a parent,
12 adult child, grandparent, adult sibling, or legal spouse of
13 a person.

14 (13) "Person" means an individual, corporation,
15 organization, or other legal entity.

16 (14) "Posttest counseling" means counseling,
17 conducted at the time the HIV-related test results are
18 given, and includes, at a minimum, written materials
19 provided by the department.

20 (15) "Pretest counseling" means the provision of
21 written materials counseling to the subject prior to conduct
22 of an HIV HIV-related test. The, including, at a minimum,
23 written materials must--be developed and provided by the
24 department.

25 (16) "Release of test results" means a written

1 authorization for disclosure of HIV-related test results
2 that:

3 (a) is signed and dated by the person tested or the
4 person authorized to act for the person tested; and that

5 (b) specifies the nature of the information to be
6 disclosed and to whom disclosure is authorized.

7 (17) "Significant other" means an individual living in a
8 current spousal relationship with another individual but who
9 is not legally a spouse of that individual.

10 (18) (a) "Written informed consent" means an
11 agreement in writing that is freely executed by the subject
12 of an HIV-related test, or by the subject's legal guardian,
13 or, if there is no legal guardian and the subject is
14 unconscious or otherwise mentally incapacitated, by the
15 subject's next-of-kin, significant other, or a person
16 designated by the subject in hospital records to act on the
17 subject's behalf, and that includes at least the following:

18 (i) an explanation of the test, including its purpose,
19 potential uses, limitations, and the meaning of its results;
20 and

21 (ii) an explanation of the procedures to be followed for
22 confidentiality, blood drawing, and counseling, including
23 notification that the test is voluntary and that consent may
24 be withdrawn at any time until the blood sample is taken;

25 (iii) a discussion an explanation of whether and to whom

1 the subject's name and test results may be disclosed; and
 2 (iv) a statement that the test may be obtained
 3 anonymously if the subject wishes;

4 (v) the name and address of a health care provider whom
 5 the subject approves to receive the subject's test results
 6 and to provide the subject with posttest counseling; and
 7 (vi) if the consent is for a test being performed as
 8 part of an application for insurance, a statement that only
 9 a positive test result will be reported to the designated
 10 health care provider and that negative test results may be
 11 obtained by the subject from the insurance company.

12 (b) The department shall develop a form agreement that
 13 may be used for purposes of this subsection."

14 **Section 2.** Section 50-16-1007, MCA, is amended to read:
 15 "50-16-1007. Testing -- counseling -- informed consent
 16 -- penalty. (1) ~~A person may not request an~~ An HIV-related
 17 test without first may be ordered only by a health care
 18 provider and only after receiving the written informed
 19 consent of:
 20 (a) the subject of the test; or
 21 (b) the subject's legal guardian;
 22 (c) the subject's next-of-kin or significant other if:
 23 (i) the subject is unconscious or otherwise mentally
 24 incapacitated;
 25 (ii) there is no legal guardian;

1 (iii) there are medical indications of an HIV-related
 2 condition; and
 3 (iv) the test is advisable in order to determine the
 4 proper course of treatment of the subject; or
 5 (d) the subject's next-of-kin or significant other or
 6 the person, if any, designated by the subject in hospital
 7 records to act on the subject's behalf if:
 8 (i) the subject is in a hospital; and
 9 (ii) the circumstances in subsection (1)(c)(i) through
 10 (iv) exist.

11 (2) ~~A~~ When a health care provider shall--certify--in
 12 writing orders an HIV-related test, he also certifies that
 13 informed consent has been received prior to requesting
 14 testing. Testing--may--only--be--requested--by--a--health--care
 15 provider. ordering an HIV-related test.

16 ~~(2)(3)~~ Prior---to---executing---an---informed---consent
 17 agreement, Before the subject of the test executes an
 18 informed consent agreement, the health care provider
 19 ordering the test or his designee must give pretest
 20 counseling to:
 21 (a) the subject; or
 22 (b) the subject's legal guardian must-be-given-pretest
 23 counseling;
 24 (c) the subject's next-of-kin or significant other if:
 25 (i) the subject is unconscious or otherwise mentally

1 incapacitated; and
 2 (ii) there is no guardian; or
 3 (d) the subject's next-of-kin or significant other or
 4 the person, if any, designated by the subject in hospital
 5 records to act on the subject's behalf if:
 6 (i) the subject is in the hospital; and
 7 (ii) the circumstances in subsection (1)(c)(i) and (ii)
 8 exist.

9 ~~†3†~~(4) A health care provider who does not provide
 10 HIV-related tests on an anonymous basis shall inform ~~a~~ each
 11 person who wishes to be tested ~~anonymously~~ that anonymous
 12 testing is available ~~at one of the counseling-testing sites~~
 13 ~~established---by---the---department~~ AT ONE OF THE
 14 COUNSELING-TESTING SITES ESTABLISHED BY THE DEPARTMENT, OR
 15 elsewhere.

16 ~~†4†~~(5) The subject of an HIV-related test or any of the
 17 subject's representatives authorized by subsection (1) to
 18 act in the subject's stead shall designate, as part of his
 19 written informed consent, a health care provider to receive
 20 the results of an HIV-related test. The designated health
 21 care provider must-be-given--to--the--health--care--provider
 22 designated--by--the--subject, who shall inform the subject or
 23 the subject's representative of the results in person.

24 ~~†5†~~(6) At the time the subject of a test or the
 25 subject's representative is given the test results, the

1 health care provider or the provider's designee shall give
 2 the subject or the subject's representative must-be-provided
 3 with posttest counseling.

4 (7) If a test is performed as part of an application
 5 for insurance, the insurance company must ensure that:
 6 (a) negative results can be obtained by the subject or
 7 his representative upon request; and
 8 (b) positive results are returned to the health care
 9 provider designated by the subject or his representative.

10 ~~†6†~~(8) A minor may consent or refuse to consent to be
 11 the subject of an HIV-related test, pursuant to 41-1-402.

12 ~~†7†~~(9) Subsections (1) through ~~†5†~~ (6) do not apply to:
 13 (a) the performance of an HIV-related test by a health
 14 care provider or health care facility that procures,
 15 processes, distributes, or uses a human body part donated
 16 for a purpose specified under Title 72, chapter 17, if the
 17 test is necessary to assure medical acceptability of the
 18 gift for the purposes intended;
 19 (b) the performance of an HIV-related test for the
 20 purpose of research if the testing is performed in a manner
 21 by which the identity of the test subject is not known and
 22 may not be retrieved by the researcher.

23 (c) the performance of an HIV-related test when:
 24 (i) the subject of the test is unconscious or otherwise
 25 mentally incapacitated;

1 (ii) there are medical indications of an HIV-related
 2 condition;

3 (iii) the test is advisable in order to determine the
 4 proper course of treatment of the subject; and

5 (iv) none of the individuals listed in subsections
 6 (1)(b), (1)(c), or (1)(d) exists or is available within 24
 7 hours A REASONABLE TIME after the test is determined to be
 8 advisable; or

9 (d) the performance of an HIV-related test conducted
 10 pursuant to 50-18-107 or 50-18-108, with the exception that
 11 the pretest and posttest counseling must still be given.

12 (10) (A) IF AN AGENT OR EMPLOYEE OF A HEALTH CARE
 13 FACILITY, A HEALTH CARE PROVIDER WITH PRIVILEGES AT THE
 14 HEALTH CARE FACILITY, OR A FIRST RESPONDER HAS BEEN
 15 VOLUNTARILY OR INVOLUNTARILY EXPOSED TO A PATIENT IN A
 16 MANNER THAT MAY ALLOW INFECTION BY HIV BY A MODE OF
 17 TRANSMISSION RECOGNIZED BY THE CENTER FOR DISEASE CONTROL OF
 18 THE UNITED STATES PUBLIC HEALTH SERVICE, THE PHYSICIAN OF
 19 THE PATIENT SHALL, UPON REQUEST OF THE EXPOSED PERSON,
 20 NOTIFY THE PATIENT OF THE EXPOSURE AND SEEK WRITTEN INFORMED
 21 CONSENT IN ACCORDANCE WITH GUIDELINES OF THE CENTER FOR
 22 DISEASE CONTROL FOR AN HIV-RELATED TEST OF THE PATIENT. IF
 23 WRITTEN INFORMED CONSENT CANNOT BE OBTAINED, THE HEALTH CARE
 24 FACILITY, IN ACCORDANCE WITH THE INFECTIOUS DISEASE EXPOSURE
 25 GUIDELINES OF THE HEALTH CARE FACILITY, MAY, WITHOUT THE

1 CONSENT OF THE PATIENT, CONDUCT THE TEST ON PREVIOUSLY DRAWN
 2 BLOOD OR PREVIOUSLY COLLECTED BODILY FLUIDS TO DETERMINE IF
 3 THE PATIENT IS IN FACT INFECTED. A HEALTH CARE FACILITY IS
 4 NOT REQUIRED TO PERFORM A TEST AUTHORIZED IN THIS
 5 SUBSECTION. IF A TEST IS CONDUCTED PURSUANT TO THIS
 6 SUBSECTION, THE HEALTH CARE FACILITY SHALL INFORM THE
 7 PATIENT OF THE RESULTS AND PROVIDE THE PATIENT WITH POSTTEST
 8 COUNSELING. THE PATIENT MAY NOT BE CHARGED FOR A TEST
 9 PERFORMED PURSUANT TO THIS SUBSECTION. THE RESULTS OF A TEST
 10 PERFORMED PURSUANT TO THIS SUBSECTION MAY NOT BE MADE PART
 11 OF THE PATIENT'S RECORD AND ARE SUBJECT TO 50-16-1009(1).

12 (B) FOR THE PURPOSES OF THIS SUBSECTION, "WRITTEN
 13 INFORMED CONSENT" MEANS AN AGREEMENT IN WRITING THAT IS
 14 FREELY EXECUTED BY THE SUBJECT OF AN HIV-RELATED TEST, BY
 15 THE SUBJECT'S LEGAL GUARDIAN, OR, IF THERE IS NO LEGAL
 16 GUARDIAN AND THE SUBJECT IS INCAPACITATED, BY THE SUBJECT'S
 17 NEXT-OF-KIN, SIGNIFICANT OTHER, OR A PERSON DESIGNATED BY
 18 THE SUBJECT IN HOSPITAL RECORDS TO ACT ON THE SUBJECT'S
 19 BEHALF.

20 (b)(1) A knowing or purposeful violation of this
 21 section is a misdemeanor punishable by a fine of \$1,000 or
 22 imprisonment for up to 6 months, or both."

23 **Section 3.** Section 50-16-1008, MCA, is amended to read:
 24 "50-16-1008. Testing of donors of organs, tissues, and
 25 semen required -- penalty. (1) ~~Immediately--prior~~ Prior to

1 donation of an organ, semen, or tissues, HIV-related testing
 2 of a prospective donor, in accordance with nationally
 3 accepted standards adopted by the department by rule, is
 4 required unless the transplantation of an indispensable
 5 organ is necessary to save a patient's life and there is not
 6 sufficient time to perform an HIV-related test.

7 (2) A knowing or purposeful violation of this section
 8 is a misdemeanor punishable by a fine of up to \$1,000 or
 9 imprisonment of up to 6 months, or both."

10 **Section 4.** Section 50-16-1009, MCA, is amended to read:

11 "50-16-1009. Confidentiality of records -- notification
 12 of contacts -- penalty for unlawful disclosure. (1) A Except
 13 as provided in subsection (2), person may not disclose or be
 14 compelled to disclose the identity of a subject of an
 15 HIV-related test or the results of a test in a manner that
 16 permits identification of the subject of the test, except to
 17 the extent allowed under the Uniform Health Care Information
 18 Act, Title 50, chapter 16, part 5.

19 (2) A local board, local health officer, or the
 20 department may disclose the identity of the subject of an
 21 HIV-related test or the test results only to the extent
 22 allowed by the Government Health Care Information Act, Title
 23 50, chapter 16, part 6, unless it is in possession of that
 24 information because a health care provider employed by it
 25 provided health care to the subject, in which case the

1 Uniform Health Care Information Act governs the release of
 2 that information.

3 ~~(2)~~(3) If a health care provider informs the subject of
 4 an HIV-related test that the results are positive, the
 5 provider shall encourage the subject to notify persons ~~with~~
 6 ~~whom there has been a contact capable of spreading HIV~~ who
 7 are potential contacts. If the subject is unable or
 8 unwilling to notify all contacts, the health care provider
 9 may ask the subject to disclose voluntarily the identities
 10 of the contacts and to authorize notification of those
 11 contacts by a health care provider. A notification may state
 12 only that the contact may have been exposed to HIV and may
 13 not include the time or place of possible exposure or the
 14 identity of the subject of the test.

15 (4) A person who discloses or compels another to
 16 disclose confidential health care information in violation
 17 of this section is guilty of a misdemeanor punishable by a
 18 fine of \$1,000 or imprisonment for 1 year, or both."

19 **Section 5.** Section 50-16-1013, MCA, is amended to read:

20 "50-16-1013. Civil remedy. (1) A person aggrieved by a
 21 violation of this part has a right of action in the district
 22 court and may recover for each violation:

23 (a) against a person who negligently violates a
 24 provision of this part, damages of ~~\$1,000~~ \$5,000 or actual
 25 damages, whichever is greater;

1 (b) against a person who intentionally or recklessly
2 violates a provision of this part, damages of ~~\$57,000~~ \$20,000
3 or actual damages, whichever is greater;

4 (c) reasonable attorney fees; and

5 (d) other appropriate relief, including injunctive
6 relief.

7 (2) An action under this section must be commenced
8 within 3 years after the cause of action accrues.

9 (3) The department may maintain a civil action to
10 enforce this part in which the court may order any relief
11 permitted under subsection (1).

12 (4) Nothing in this section limits the rights of a
13 subject of an HIV-related test to recover damages or other
14 relief under any other applicable law or cause of action.

15 (5) Nothing in this part may be construed to impose
16 civil liability or criminal sanctions for disclosure of an
17 HIV-related test result in accordance with any reporting
18 requirement for a diagnosed case of AIDS or an HIV-related
19 condition by the department or the centers for disease
20 control of the United States public health service."

21 **Section 6.** Section 50-16-529, MCA, is amended to read:

22 **"50-16-529. Disclosure without patient's authorization**
23 **based on need to know.** A health care provider may disclose
24 health care information about a patient without the
25 patient's authorization, to the extent a recipient needs to

1 know the information, if the disclosure is:

2 (1) to a person who is providing health care to the
3 patient;

4 (2) to any other person who requires health care
5 information for health care education; to provide planning,
6 quality assurance, peer review, or administrative, legal,
7 financial, or actuarial services to the health care
8 provider; for assisting the health care provider in the
9 delivery of health care; or to a third-party health care
10 payor who requires health care information and if the health
11 care provider reasonably believes that the person will:

12 (a) not use or disclose the health care information for
13 any other purpose; and

14 (b) take appropriate steps to protect the health care
15 information;

16 (3) to any other health care provider who has
17 previously provided health care to the patient, to the
18 extent necessary to provide health care to the patient,
19 unless the patient has instructed the health care provider
20 not to make the disclosure;

21 (4) to immediate family members of the patient or any
22 other individual with whom the patient is known to have a
23 close personal relationship, if made in accordance with the
24 laws of the state and good medical or other professional
25 practice, unless the patient has instructed the health care

1 provider not to make the disclosure;

2 (5) to a health care provider who is the successor in
3 interest to the health care provider maintaining the health
4 care information;

5 (6) for use in a research project that an institutional
6 review board has determined:

7 (a) is of sufficient importance to outweigh the
8 intrusion into the privacy of the patient that would result
9 from the disclosure;

10 (b) is impracticable without the use or disclosure of
11 the health care information in individually identifiable
12 form;

13 (c) contains reasonable safeguards to protect the
14 information from improper disclosure;

15 (d) contains reasonable safeguards to protect against
16 directly or indirectly identifying any patient in any report
17 of the research project; and

18 (e) contains procedures to remove or destroy at the
19 earliest opportunity, consistent with the purposes of the
20 project, information that would enable the patient to be
21 identified, unless an institutional review board authorizes
22 retention of identifying information for purposes of another
23 research project;

24 (7) to a person who obtains information for purposes of
25 an audit, if that person agrees in writing to:

1 (a) remove or destroy, at the earliest opportunity
2 consistent with the purpose of the audit, information that
3 would enable the patient to be identified; and

4 (b) not disclose the information further, except to
5 accomplish the audit or to report unlawful or improper
6 conduct involving fraud in payment for health care by a
7 health care provider or patient or other unlawful conduct by
8 a health care provider;--and

9 (8) to an official of a penal or other custodial
10 institution in which the patient is detained; and

11 (9) to any person CONTACT, AS DEFINED IN 50-16-1003, if
12 the health care provider reasonably believes that disclosure
13 will avoid or minimize an imminent danger to the health or
14 safety of the patient CONTACT or any other individual."

15 NEW SECTION. SECTION 7. SEVERABILITY. IF A PART OF
16 [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE
17 FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS
18 ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART
19 REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE
20 SEVERABLE FROM THE INVALID APPLICATIONS.

21 NEW SECTION. Section 8. Effective date. [This act] is
22 effective July 1, 1991.

-End-

1 HOUSE BILL NO. 917

2 INTRODUCED BY TOOLE, KEATING, MEASURE, COBB

3 STICKNEY, RUSSELL, SQUIRES

4 BY REQUEST OF THE DEPARTMENT OF

5 HEALTH AND ENVIRONMENTAL SCIENCES

6
 7 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 8 AIDS PREVENTION ACT; CHANGING THE DEFINITION OF "HEALTH CARE
 9 PROVIDER" TO CONFORM WITH THE UNIFORM HEALTH CARE
 10 INFORMATION ACT; CLARIFYING THE KIND OF COUNSELING THAT A
 11 HEALTH CARE PROVIDER IS REQUIRED TO GIVE IN ADMINISTERING AN
 12 HIV-RELATED TEST; ALLOWING NEXT-OF-KIN, A SIGNIFICANT OTHER,
 13 OR A DESIGNATED INDIVIDUAL TO CONSENT TO AN HIV-RELATED TEST
 14 ADMINISTERED TO AN UNCONSCIOUS OR MENTALLY INCAPACITATED
 15 PERSON; ESTABLISHING THAT AN ORDER TO PERFORM AN HIV-RELATED
 16 TEST ALSO CERTIFIES THAT PRIOR INFORMED CONSENT WAS
 17 OBTAINED; REQUIRING A HEALTH CARE PROVIDER WHO DOES NOT
 18 PROVIDE HIV-RELATED TESTS ON AN ANONYMOUS BASIS TO INFORM
 19 ALL THOSE WISHING TO BE TESTED THAT ANONYMOUS TESTING IS
 20 AVAILABLE ELSEWHERE; REQUIRING THE SUBJECT OF AN HIV-RELATED
 21 TEST TO DESIGNATE A HEALTH CARE PROVIDER TO RECEIVE THE
 22 RESULTS OF THE TEST; REQUIRING INSURANCE COMPANIES TO INFORM
 23 APPLICANTS OF POSITIVE HIV TEST RESULTS AND ALLOW THEM
 24 ACCESS TO NEGATIVE HIV TEST RESULTS; CLARIFYING WHEN CONSENT
 25 TO A TEST MAY BE WITHDRAWN AND WHEN IT IS NOT REQUIRED;

1 PROVIDING FOR HIV TESTING OF PATIENTS POTENTIALLY INFECTING
 2 HEALTH CARE FACILITY PERSONNEL OR EMERGENCY RESPONDERS;
 3 ALLOWING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
 4 TO ADOPT STANDARDS FOR HIV-RELATED TESTING OF ORGAN, TISSUE,
 5 AND SEMEN DONORS; CLARIFYING WHEN THE IDENTITY OF THE
 6 SUBJECT OF AN HIV-RELATED TEST AND TEST RESULTS MAY BE
 7 DISCLOSED BY GOVERNMENT HEALTH CARE WORKERS; REVISING THE
 8 UNIFORM HEALTH CARE INFORMATION ACT TO ALLOW HEALTH CARE
 9 PROVIDERS TO RELEASE HEALTH CARE INFORMATION WITHOUT CONSENT
 10 WHEN DISCLOSURE WILL AVOID OR MINIMIZE DANGER TO THE HEALTH
 11 OR SAFETY OF A PERSON; MAKING IT A MISDEMEANOR FOR A PERSON
 12 TO UNLAWFULLY DISCLOSE CONFIDENTIAL HEALTH CARE INFORMATION;
 13 INCREASING THE CIVIL PENALTIES FOR VIOLATION OF THE AIDS
 14 PREVENTION ACT; AMENDING SECTIONS 50-16-529, 50-16-1003,
 15 50-16-1007, 50-16-1008, 50-16-1009, AND 50-16-1013, MCA; AND
 16 PROVIDING AN EFFECTIVE DATE."

17
18 STATEMENT OF INTENT

19 A statement of intent is required for this bill because
 20 [section 3] gives authority to the department of health and
 21 environmental sciences to adopt rules setting standards that
 22 must be met before donation of an organ, semen, or tissues
 23 in order to prevent transmission of the virus causing
 24 acquired immune deficiency syndrome (AIDS). It is intended
 25 that the department adopt nationally accepted standards that

1 are developed for each type of donation and that are
 2 apparently most effective in preventing transmission of the
 3 virus.

4
 5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

6 **Section 1.** Section 50-16-1003, MCA, is amended to read:

7 **"50-16-1003. Definitions.** As used in this part, the
 8 following definitions apply:

9 (1) "AIDS" means acquired immune deficiency syndrome as
 10 further defined by the department in accordance with
 11 standards promulgated by the centers for disease control of
 12 the United States public health service.

13 (2) "Contact" means:

14 (a) an individual identified by the subject of an
 15 HIV-related test as a past or present sexual partner or as a
 16 person with whom the subject has shared hypodermic needles
 17 or syringes; or

18 (b) any other person who has been exposed to the test
 19 subject in a manner, voluntary or involuntary, that may
 20 allow HIV transmission IN ACCORDANCE WITH MODES OF
 21 TRANSMISSION RECOGNIZED BY THE CENTER FOR DISEASE CONTROL OF
 22 THE UNITED STATES PUBLIC HEALTH SERVICE.

23 (3) "Department" means the department of health and
 24 environmental sciences provided for in 2-15-2101.

25 (4) "HIV" means the human immunodeficiency virus,

1 identified as the causative agent of AIDS, and all HIV and
 2 HIV-related viruses that damage the cellular branch of the
 3 human immune or neurological systems and leave the infected
 4 person immunodeficient or neurologically impaired.

5 (5) "HIV-related condition" means a chronic disease
 6 resulting from infection with HIV, including but not limited
 7 to AIDS and asymptomatic seropositivity for HIV.

8 (6) "HIV-related test" means a laboratory test approved
 9 by the federal food and drug administration, including but
 10 not limited to an enzyme immunoassay and a western blot,
 11 that is designed to detect the presence of HIV or antibodies
 12 to HIV.

13 (7) "Health care facility" means a health care
 14 institution, private or public, including but not limited to
 15 a hospital, nursing home, clinic, blood bank, blood center,
 16 sperm bank, or laboratory.

17 (8) "Health care provider" means a physician, nurse,
 18 paramedic, psychologist, dentist, public health department
 19 agent, or other person providing medical, nursing,
 20 psychological, or other health care services of any kind
 21 person who is licensed, certified, or otherwise authorized
 22 by the laws of this state to provide health care in the
 23 ordinary course of business or practice of a profession. The
 24 term does not include a person who provides health care
 25 solely through the sale or dispensing of drugs or medical

1 devices.

2 (9) "Legal guardian" means a person appointed by a
3 court to assume legal authority for another who has been
4 found incapacitated or, in the case of a minor, a person who
5 has legal custody of the minor.

6 (10) "Local board" means a county, city, city-county, or
7 district board of health.

8 (11) "Local health officer" means a county, city,
9 city-county, or district health officer appointed by the
10 local board.

11 (12) "Next-of-kin" means an individual who is a parent,
12 adult child, grandparent, adult sibling, or legal spouse of
13 a person.

14 (13) "Person" means an individual, corporation,
15 organization, or other legal entity.

16 (14) "Posttest counseling" means counseling,
17 conducted at the time the HIV-related test results are
18 given, and includes, at a minimum, written materials
19 provided by the department.

20 (15) "Pretest counseling" means the provision of
21 written-materials counseling to the subject prior to conduct
22 of an HIV HIV-related test--The, including, at a minimum,
23 written materials must--be developed and provided by the
24 department.

25 (16) "Release of test results" means a written

1 authorization for disclosure of HIV-related test results
2 that:

3 (a) is signed and dated by the person tested or the
4 person authorized to act for the person tested; and that

5 (b) specifies the nature of the information to be
6 disclosed and to whom disclosure is authorized.

7 (17) "Significant other" means an individual living in a
8 current spousal relationship with another individual but who
9 is not legally a spouse of that individual.

10 (18) (a) "Written informed consent" means an
11 agreement in writing that is freely executed by the subject
12 of an HIV-related test, or by the subject's legal guardian,
13 or, if there is no legal guardian and the subject is
14 unconscious or otherwise mentally incapacitated, by the
15 subject's next-of-kin, significant other, or a person
16 designated by the subject in hospital records to act on the
17 subject's behalf, and that includes at least the following:

18 (i) an explanation of the test, including its purpose,
19 potential uses, limitations, and the meaning of its results;
20 and

21 (ii) an explanation of the procedures to be followed for
22 confidentiality, blood drawing, and counseling, including
23 notification that the test is voluntary and that consent may
24 be withdrawn at any time until the blood sample is taken;

25 (iii) a-discussion an explanation of whether and to whom

1 the subject's name and test results may be disclosed; and
 2 (iv) a statement that the test may be obtained
 3 anonymously if the subject wishes;
 4 (v) the name and address of a health care provider whom
 5 the subject approves to receive the subject's test results
 6 and to provide the subject with posttest counseling; and
 7 (vi) if the consent is for a test being performed as
 8 part of an application for insurance, a statement that only
 9 a positive test result will be reported to the designated
 10 health care provider and that negative test results may be
 11 obtained by the subject from the insurance company.
 12 (b) The department shall develop a form agreement that
 13 may be used for purposes of this subsection."
 14 **Section 2.** Section 50-16-1007, MCA, is amended to read:
 15 "50-16-1007. Testing -- counseling -- informed consent
 16 -- penalty. (1) ~~A person may not request an~~ An HIV-related
 17 test without first may be ordered only by a health care
 18 provider and only after receiving the written informed
 19 consent of:
 20 (a) the subject of the test; or
 21 (b) the subject's legal guardian;
 22 (c) the subject's next-of-kin or significant other if:
 23 (i) the subject is unconscious or otherwise mentally
 24 incapacitated;
 25 (ii) there is no legal guardian;

1 (iii) there are medical indications of an HIV-related
 2 condition; and
 3 (iv) the test is advisable in order to determine the
 4 proper course of treatment of the subject; or
 5 (d) the subject's next-of-kin or significant other or
 6 the person, if any, designated by the subject in hospital
 7 records to act on the subject's behalf if:
 8 (i) the subject is in a hospital; and
 9 (ii) the circumstances in subsection (1)(c)(i) through
 10 (iv) exist.
 11 (2) A When a health care provider shall--certify--in
 12 writing orders an HIV-related test, he also certifies that
 13 informed consent has been received prior to requesting
 14 testing: Testing--may--only--be--requested--by--a--health--care
 15 provider; ordering an HIV-related test.
 16 ~~(2)(3)~~ Prior---to---executing---an---informed---consent
 17 agreement, Before the subject of the test executes an
 18 informed consent agreement, the health care provider
 19 ordering the test or his designee must give pretest
 20 counseling to:
 21 (a) the subject; or
 22 (b) the subject's legal guardian must be given pretest
 23 counseling;
 24 (c) the subject's next-of-kin or significant other if:
 25 (i) the subject is unconscious or otherwise mentally

1 incapacitated; and
 2 (ii) there is no guardian; or
 3 (d) the subject's next-of-kin or significant other or
 4 the person, if any, designated by the subject in hospital
 5 records to act on the subject's behalf if:
 6 (i) the subject is in the hospital; and
 7 (ii) the circumstances in subsection (1)(c)(i) and (ii)
 8 exist.
 9 {4}(4) A health care provider who does not provide
 10 HIV-related tests on an anonymous basis shall inform a each
 11 person who wishes to be tested anonymously that anonymous
 12 testing is available at one of the counseling testing sites
 13 established---by---the---department AT ONE OF THE
 14 COUNSELING-TESTING SITES ESTABLISHED BY THE DEPARTMENT, OR
 15 elsewhere.
 16 {4}(5) The subject of an HIV-related test or any of the
 17 subject's representatives authorized by subsection (1) to
 18 act in the subject's stead shall designate, as part of his
 19 written informed consent, a health care provider to receive
 20 the results of an HIV-related test. The designated health
 21 care provider must-be-given--to--the--health--care--provider
 22 designated--by--the--subject, who shall inform the subject or
 23 the subject's representative of the results in person.
 24 {5}(6) At the time the subject of a test or the
 25 subject's representative is given the test results, the

1 health care provider or the provider's designee shall give
 2 the subject or the subject's representative must-be-provided
 3 with posttest counseling.
 4 (7) If a test is performed as part of an application
 5 for insurance, the insurance company must ensure that:
 6 (a) negative results can be obtained by the subject or
 7 his representative upon request; and
 8 (b) positive results are returned to the health care
 9 provider designated by the subject or his representative.
 10 {6}(8) A minor may consent or refuse to consent to be
 11 the subject of an HIV-related test, pursuant to 41-1-402.
 12 {7}(9) Subsections (1) through {5}(6) do not apply to:
 13 (a) the performance of an HIV-related test by a health
 14 care provider or health care facility that procures,
 15 processes, distributes, or uses a human body part donated
 16 for a purpose specified under Title 72, chapter 17, if the
 17 test is necessary to assure medical acceptability of the
 18 gift for the purposes intended;
 19 (b) the performance of an HIV-related test for the
 20 purpose of research if the testing is performed in a manner
 21 by which the identity of the test subject is not known and
 22 may not be retrieved by the researcher.
 23 {c) the performance of an HIV-related test when:
 24 (i) the subject of the test is unconscious or otherwise
 25 mentally incapacitated;

1 (ii) there are medical indications of an HIV-related
2 condition;

3 (iii) the test is advisable in order to determine the
4 proper course of treatment of the subject; and

5 (iv) none of the individuals listed in subsections
6 (1)(b), (1)(c), or (1)(d) exists or is available within 24
7 hours A REASONABLE TIME after the test is determined to be
8 advisable; or

9 (d) the performance of an HIV-related test conducted
10 pursuant to 50-18-107 or 50-18-108, with the exception that
11 the pretest and posttest counseling must still be given.

12 (10) (A) IF AN AGENT OR EMPLOYEE OF A HEALTH CARE
13 FACILITY, A HEALTH CARE PROVIDER WITH PRIVILEGES AT THE
14 HEALTH CARE FACILITY, OR A FIRST RESPONDER HAS BEEN
15 VOLUNTARILY OR INVOLUNTARILY EXPOSED TO A PATIENT IN A
16 MANNER THAT MAY ALLOW INFECTION BY HIV BY A MODE OF
17 TRANSMISSION RECOGNIZED BY THE CENTER FOR DISEASE CONTROL OF
18 THE UNITED STATES PUBLIC HEALTH SERVICE, THE PHYSICIAN OF
19 THE PATIENT SHALL, UPON REQUEST OF THE EXPOSED PERSON,
20 NOTIFY THE PATIENT OF THE EXPOSURE AND SEEK WRITTEN INFORMED
21 CONSENT IN ACCORDANCE WITH GUIDELINES OF THE CENTER FOR
22 DISEASE CONTROL FOR AN HIV-RELATED TEST OF THE PATIENT. IF
23 WRITTEN INFORMED CONSENT CANNOT BE OBTAINED, THE HEALTH CARE
24 FACILITY, IN ACCORDANCE WITH THE INFECTIOUS DISEASE EXPOSURE
25 GUIDELINES OF THE HEALTH CARE FACILITY, MAY, WITHOUT THE

1 CONSENT OF THE PATIENT, CONDUCT THE TEST ON PREVIOUSLY DRAWN
2 BLOOD OR PREVIOUSLY COLLECTED BODILY FLUIDS TO DETERMINE IF
3 THE PATIENT IS IN FACT INFECTED. A HEALTH CARE FACILITY IS
4 NOT REQUIRED TO PERFORM A TEST AUTHORIZED IN THIS
5 SUBSECTION. IF A TEST IS CONDUCTED PURSUANT TO THIS
6 SUBSECTION, THE HEALTH CARE FACILITY SHALL INFORM THE
7 PATIENT OF THE RESULTS AND PROVIDE THE PATIENT WITH POSTTEST
8 COUNSELING. THE PATIENT MAY NOT BE CHARGED FOR A TEST
9 PERFORMED PURSUANT TO THIS SUBSECTION. THE RESULTS OF A TEST
10 PERFORMED PURSUANT TO THIS SUBSECTION MAY NOT BE MADE PART
11 OF THE PATIENT'S RECORD AND ARE SUBJECT TO 50-16-1009(1).

12 (B) FOR THE PURPOSES OF THIS SUBSECTION, "WRITTEN
13 INFORMED CONSENT" MEANS AN AGREEMENT IN WRITING THAT IS
14 FREELY EXECUTED BY THE SUBJECT OF AN HIV-RELATED TEST, BY
15 THE SUBJECT'S LEGAL GUARDIAN, OR, IF THERE IS NO LEGAL
16 GUARDIAN AND THE SUBJECT IS INCAPACITATED, BY THE SUBJECT'S
17 NEXT-OF-KIN, SIGNIFICANT OTHER, OR A PERSON DESIGNATED BY
18 THE SUBJECT IN HOSPITAL RECORDS TO ACT ON THE SUBJECT'S
19 BEHALF.

20 {8}{10}(11) A knowing or purposeful violation of this
21 section is a misdemeanor punishable by a fine of \$1,000 or
22 imprisonment for up to 6 months, or both."

23 **Section 3.** Section 50-16-1008, MCA, is amended to read:
24 "50-16-1008. Testing of donors of organs, tissues, and
25 semen required -- penalty. (1) ~~immediately~~ prior Prior to

1 donation of an organ, semen, or tissues, HIV-related testing
 2 of a prospective donor, in accordance with nationally
 3 accepted standards adopted by the department by rule, is
 4 required unless the transplantation of an indispensable
 5 organ is necessary to save a patient's life and there is not
 6 sufficient time to perform an HIV-related test.

7 (2) A knowing or purposeful violation of this section
 8 is a misdemeanor punishable by a fine of up to \$1,000 or
 9 imprisonment of up to 6 months, or both."

10 **Section 4.** Section 50-16-1009, MCA, is amended to read:

11 **"50-16-1009. Confidentiality of records -- notification**
 12 **of contacts -- penalty for unlawful disclosure.** (1) A Except
 13 as provided in subsection (2), person may not disclose or be
 14 compelled to disclose the identity of a subject of an
 15 HIV-related test or the results of a test in a manner that
 16 permits identification of the subject of the test, except to
 17 the extent allowed under the Uniform Health Care Information
 18 Act, Title 50, chapter 16, part 5.

19 (2) A local board, local health officer, or the
 20 department may disclose the identity of the subject of an
 21 HIV-related test or the test results only to the extent
 22 allowed by the Government Health Care Information Act, Title
 23 50, chapter 16, part 6, unless it is in possession of that
 24 information because a health care provider employed by it
 25 provided health care to the subject, in which case the

1 Uniform Health Care Information Act governs the release of
 2 that information.

3 ~~(2)~~(3) If a health care provider informs the subject of
 4 an HIV-related test that the results are positive, the
 5 provider shall encourage the subject to notify persons with
 6 ~~whom there has been a contact capable of spreading--HIV~~ who
 7 are potential contacts. If the subject is unable or
 8 unwilling to notify all contacts, the health care provider
 9 may ask the subject to disclose voluntarily the identities
 10 of the contacts and to authorize notification of those
 11 contacts by a health care provider. A notification may state
 12 only that the contact may have been exposed to HIV and may
 13 not include the time or place of possible exposure or the
 14 identity of the subject of the test.

15 (4) A person who discloses or compels another to
 16 disclose confidential health care information in violation
 17 of this section is guilty of a misdemeanor punishable by a
 18 fine of \$1,000 or imprisonment for 1 year, or both."

19 **Section 5.** Section 50-16-1013, MCA, is amended to read:

20 **"50-16-1013. Civil remedy.** (1) A person aggrieved by a
 21 violation of this part has a right of action in the district
 22 court and may recover for each violation:

23 (a) against a person who negligently violates a
 24 provision of this part, damages of ~~\$1,000~~ \$5,000 or actual
 25 damages, whichever is greater;

1 (b) against a person who intentionally or recklessly
2 violates a provision of this part, damages of ~~\$5,000~~ \$20,000
3 or actual damages, whichever is greater;

4 (c) reasonable attorney fees; and

5 (d) other appropriate relief, including injunctive
6 relief.

7 (2) An action under this section must be commenced
8 within 3 years after the cause of action accrues.

9 (3) The department may maintain a civil action to
10 enforce this part in which the court may order any relief
11 permitted under subsection (1).

12 (4) Nothing in this section limits the rights of a
13 subject of an HIV-related test to recover damages or other
14 relief under any other applicable law or cause of action.

15 (5) Nothing in this part may be construed to impose
16 civil liability or criminal sanctions for disclosure of an
17 HIV-related test result in accordance with any reporting
18 requirement for a diagnosed case of AIDS or an HIV-related
19 condition by the department or the centers for disease
20 control of the United States public health service."

21 **Section 6.** Section 50-16-529, MCA, is amended to read:

22 "50-16-529. Disclosure without patient's authorization
23 based on need to know. A health care provider may disclose
24 health care information about a patient without the
25 patient's authorization, to the extent a recipient needs to

1 know the information, if the disclosure is:

2 (1) to a person who is providing health care to the
3 patient;

4 (2) to any other person who requires health care
5 information for health care education; to provide planning,
6 quality assurance, peer review, or administrative, legal,
7 financial, or actuarial services to the health care
8 provider; for assisting the health care provider in the
9 delivery of health care; or to a third-party health care
10 payor who requires health care information and if the health
11 care provider reasonably believes that the person will:

12 (a) not use or disclose the health care information for
13 any other purpose; and

14 (b) take appropriate steps to protect the health care
15 information;

16 (3) to any other health care provider who has
17 previously provided health care to the patient, to the
18 extent necessary to provide health care to the patient,
19 unless the patient has instructed the health care provider
20 not to make the disclosure;

21 (4) to immediate family members of the patient or any
22 other individual with whom the patient is known to have a
23 close personal relationship, if made in accordance with the
24 laws of the state and good medical or other professional
25 practice, unless the patient has instructed the health care

1 provider not to make the disclosure;
 2 (5) to a health care provider who is the successor in
 3 interest to the health care provider maintaining the health
 4 care information;
 5 (6) for use in a research project that an institutional
 6 review board has determined:
 7 (a) is of sufficient importance to outweigh the
 8 intrusion into the privacy of the patient that would result
 9 from the disclosure;
 10 (b) is impracticable without the use or disclosure of
 11 the health care information in individually identifiable
 12 form;
 13 (c) contains reasonable safeguards to protect the
 14 information from improper disclosure;
 15 (d) contains reasonable safeguards to protect against
 16 directly or indirectly identifying any patient in any report
 17 of the research project; and
 18 (e) contains procedures to remove or destroy at the
 19 earliest opportunity, consistent with the purposes of the
 20 project, information that would enable the patient to be
 21 identified, unless an institutional review board authorizes
 22 retention of identifying information for purposes of another
 23 research project;
 24 (7) to a person who obtains information for purposes of
 25 an audit, if that person agrees in writing to:

1 (a) remove or destroy, at the earliest opportunity
 2 consistent with the purpose of the audit, information that
 3 would enable the patient to be identified; and
 4 (b) not disclose the information further, except to
 5 accomplish the audit or to report unlawful or improper
 6 conduct involving fraud in payment for health care by a
 7 health care provider or patient or other unlawful conduct by
 8 a health care provider;--and
 9 (8) to an official of a penal or other custodial
 10 institution in which the patient is detained; and
 11 (9) to any person CONTACT, AS DEFINED IN 50-16-1003, if
 12 the health care provider reasonably believes that disclosure
 13 will avoid or minimize an imminent danger to the health or
 14 safety of the patient CONTACT or any other individual."

15 NEW SECTION. SECTION 7. SEVERABILITY. IF A PART OF
 16 [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE
 17 FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS
 18 ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART
 19 REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE
 20 SEVERABLE FROM THE INVALID APPLICATIONS.

21 NEW SECTION. Section 8. Effective date. [This act] is
 22 effective July 1, 1991.

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
March 27, 1991

Page 2 of 2
March 27, 1991

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety having had under consideration House Bill No. 917 (third reading copy -- blue), respectfully report that House Bill No. 917 be amended and as so amended be concurred in:

1. Title, page 2, line 2.
Following: "FACILITY"
Insert: "OR EMERGENCY SERVICES"
Following: "PERSONNEL"
Strike: "OR EMERGENCY RESPONDERS"

2. Title, page 2, line 14.
Following: "50-16-529,"
Insert: "50-16-702,"

3. Page 11, line 14.
Following: "A"
Strike: "FIRST RESPONDER"
Insert: "person providing emergency services who is described in 50-16-702(1)"

4. Page 18, line 15.
Following: line 14
Insert: "Section 7. Section 50-16-702, MCA, is amended to read:
"50-16-702. Report of unprotected exposure to disease. (1)
A report may be filed, as provided in subsection (2), by a person:
(a) employed by or acting as a volunteer with a public or private organization that provides emergency services to the public, including but not limited to a law enforcement officer, firefighter, emergency medical technician, corrections officer, or ambulance service attendant; and
(b) who, in his official capacity with the public or private organization, attends or assists in transporting a patient to a health care facility and believes he has sustained an unprotected exposure.
(2) A person who qualifies in subsection (1) may submit to the health care facility, on a form prescribed by the department, a report of unprotected exposure that contains his name and other information required by the department, including a description of the unprotected exposure.

(3) If the exposure described in the report occurred in a manner that may allow infection by HIV, as defined in 50-16-1003, by a mode of transmission recognized by the center for disease control, then submission of the report to the health care facility constitutes a request to the patient's physician to seek consent for performance of an HIV-related test pursuant to 50-16-1007(10).
Renumber: subsequent sections

Signed: Dorothy Beck
Dorothy Beck, Chairman

JA 3-27-91
Ad. Coord.
SB 3-27 2:20
Sec. of Senate

1 HOUSE BILL NO. 917

2 INTRODUCED BY TOOLE, KEATING, MEASURE, COBB

3 STICKNEY, RUSSELL, SQUIRES

4 BY REQUEST OF THE DEPARTMENT OF

5 HEALTH AND ENVIRONMENTAL SCIENCES

6

7 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 8 AIDS PREVENTION ACT; CHANGING THE DEFINITION OF "HEALTH CARE
 9 PROVIDER" TO CONFORM WITH THE UNIFORM HEALTH CARE
 10 INFORMATION ACT; CLARIFYING THE KIND OF COUNSELING THAT A
 11 HEALTH CARE PROVIDER IS REQUIRED TO GIVE IN ADMINISTERING AN
 12 HIV-RELATED TEST; ALLOWING NEXT-OF-KIN, A SIGNIFICANT OTHER,
 13 OR A DESIGNATED INDIVIDUAL TO CONSENT TO AN HIV-RELATED TEST
 14 ADMINISTERED TO AN UNCONSCIOUS OR MENTALLY INCAPACITATED
 15 PERSON; ESTABLISHING THAT AN ORDER TO PERFORM AN HIV-RELATED
 16 TEST ALSO CERTIFIES THAT PRIOR INFORMED CONSENT WAS
 17 OBTAINED; REQUIRING A HEALTH CARE PROVIDER WHO DOES NOT
 18 PROVIDE HIV-RELATED TESTS ON AN ANONYMOUS BASIS TO INFORM
 19 ALL THOSE WISHING TO BE TESTED THAT ANONYMOUS TESTING IS
 20 AVAILABLE ELSEWHERE; REQUIRING THE SUBJECT OF AN HIV-RELATED
 21 TEST TO DESIGNATE A HEALTH CARE PROVIDER TO RECEIVE THE
 22 RESULTS OF THE TEST; REQUIRING INSURANCE COMPANIES TO INFORM
 23 APPLICANTS OF POSITIVE HIV TEST RESULTS AND ALLOW THEM
 24 ACCESS TO NEGATIVE HIV TEST RESULTS; CLARIFYING WHEN CONSENT
 25 TO A TEST MAY BE WITHDRAWN AND WHEN IT IS NOT REQUIRED;

1 PROVIDING FOR HIV TESTING OF PATIENTS POTENTIALLY INFECTING
 2 HEALTH CARE FACILITY OR EMERGENCY SERVICES PERSONNEL OR
 3 EMERGENCY-RESPONDERS; ALLOWING THE DEPARTMENT OF HEALTH AND
 4 ENVIRONMENTAL SCIENCES TO ADOPT STANDARDS FOR HIV-RELATED
 5 TESTING OF ORGAN, TISSUE, AND SEMEN DONORS; CLARIFYING WHEN
 6 THE IDENTITY OF THE SUBJECT OF AN HIV-RELATED TEST AND TEST
 7 RESULTS MAY BE DISCLOSED BY GOVERNMENT HEALTH CARE WORKERS;
 8 REVISING THE UNIFORM HEALTH CARE INFORMATION ACT TO ALLOW
 9 HEALTH CARE PROVIDERS TO RELEASE HEALTH CARE INFORMATION
 10 WITHOUT CONSENT WHEN DISCLOSURE WILL AVOID OR MINIMIZE
 11 DANGER TO THE HEALTH OR SAFETY OF A PERSON; MAKING IT A
 12 MISDEMEANOR FOR A PERSON TO UNLAWFULLY DISCLOSE CONFIDENTIAL
 13 HEALTH CARE INFORMATION; INCREASING THE CIVIL PENALTIES FOR
 14 VIOLATION OF THE AIDS PREVENTION ACT; AMENDING SECTIONS
 15 50-16-529, 50-16-702, 50-16-1003, 50-16-1007, 50-16-1008,
 16 50-16-1009, AND 50-16-1013, MCA; AND PROVIDING AN EFFECTIVE
 17 DATE."

18

19 STATEMENT OF INTENT

20 A statement of intent is required for this bill because
 21 [section 3] gives authority to the department of health and
 22 environmental sciences to adopt rules setting standards that
 23 must be met before donation of an organ, semen, or tissues
 24 in order to prevent transmission of the virus causing
 25 acquired immune deficiency syndrome (AIDS). It is intended



1 that the department adopt nationally accepted standards that
2 are developed for each type of donation and that are
3 apparently most effective in preventing transmission of the
4 virus.

5
6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

7 **Section 1.** Section 50-16-1003, MCA, is amended to read:

8 "50-16-1003. Definitions. As used in this part, the
9 following definitions apply:

10 (1) "AIDS" means acquired immune deficiency syndrome as
11 further defined by the department in accordance with
12 standards promulgated by the centers for disease control of
13 the United States public health service.

14 (2) "Contact" means:

15 (a) an individual identified by the subject of an
16 HIV-related test as a past or present sexual partner or as a
17 person with whom the subject has shared hypodermic needles
18 or syringes; or

19 (b) any other person who has been exposed to the test
20 subject in a manner, voluntary or involuntary, that may
21 allow HIV transmission IN ACCORDANCE WITH MODES OF
22 TRANSMISSION RECOGNIZED BY THE CENTER FOR DISEASE CONTROL OF
23 THE UNITED STATES PUBLIC HEALTH SERVICE.

24 (3) "Department" means the department of health and
25 environmental sciences provided for in 2-15-2101.

1 (4) "HIV" means the human immunodeficiency virus,
2 identified as the causative agent of AIDS, and all HIV and
3 HIV-related viruses that damage the cellular branch of the
4 human immune or neurological systems and leave the infected
5 person immunodeficient or neurologically impaired.

6 (5) "HIV-related condition" means a chronic disease
7 resulting from infection with HIV, including but not limited
8 to AIDS and asymptomatic seropositivity for HIV.

9 (6) "HIV-related test" means a laboratory test approved
10 by the federal food and drug administration, including but
11 not limited to an enzyme immunoassay and a western blot,
12 that is designed to detect the presence of HIV or antibodies
13 to HIV.

14 (7) "Health care facility" means a health care
15 institution, private or public, including but not limited to
16 a hospital, nursing home, clinic, blood bank, blood center,
17 sperm bank, or laboratory.

18 (8) "Health care provider" means a physician,--nurse,
19 paramedic,--psychologist,--dentist,--public-health-department
20 agent,--or--other---person---providing---medical,---nursing,
21 psychological,--or--other--health--care-services-of-any-kind
22 person who is licensed, certified, or otherwise authorized
23 by the laws of this state to provide health care in the
24 ordinary course of business or practice of a profession. The
25 term does not include a person who provides health care

1 solely through the sale or dispensing of drugs or medical
 2 devices.

3 (9) "Legal guardian" means a person appointed by a
 4 court to assume legal authority for another who has been
 5 found incapacitated or, in the case of a minor, a person who
 6 has legal custody of the minor.

7 (10) "Local board" means a county, city, city-county, or
 8 district board of health.

9 (11) "Local health officer" means a county, city,
 10 city-county, or district health officer appointed by the
 11 local board.

12 (12) "Next-of-kin" means an individual who is a parent,
 13 adult child, grandparent, adult sibling, or legal spouse of
 14 a person.

15 (13) "Person" means an individual, corporation,
 16 organization, or other legal entity.

17 (14) "Posttest counseling" means counseling,
 18 conducted at the time the HIV-related test results are
 19 given, and includes, at a minimum, written materials
 20 provided by the department.

21 (15) "Pretest counseling" means the provision of
 22 written-materials counseling to the subject prior to conduct
 23 of an HIV HIV-related test--The, including, at a minimum,
 24 written materials must-be developed and provided by the
 25 department.

1 (16) "Release of test results" means a written
 2 authorization for disclosure of HIV-related test results
 3 that:

4 (a) is signed and dated by the person tested or the
 5 person authorized to act for the person tested; and that

6 (b) specifies the nature of the information to be
 7 disclosed and to whom disclosure is authorized.

8 (17) "Significant other" means an individual living in a
 9 current spousal relationship with another individual but who
 10 is not legally a spouse of that individual.

11 (18) (a) "Written informed consent" means an
 12 agreement in writing that is freely executed by the subject
 13 of an HIV-related test, or by the subject's legal guardian,
 14 or, if there is no legal guardian and the subject is
 15 unconscious or otherwise mentally incapacitated, by the
 16 subject's next-of-kin, significant other, or a person
 17 designated by the subject in hospital records to act on the
 18 subject's behalf, and that includes at least the following:

19 (i) an explanation of the test, including its purpose,
 20 potential uses, limitations, and the meaning of its results;
 21 and

22 (ii) an explanation of the procedures to be followed for
 23 confidentiality, blood drawing, and counseling, including
 24 notification that the test is voluntary and that consent may
 25 be withdrawn at any time until the blood sample is taken;

1 (iii) ~~a discussion~~ an explanation of whether and to whom
 2 the subject's name and test results may be disclosed; and
 3 (iv) a statement that the test may be obtained
 4 anonymously if the subject wishes;
 5 (v) the name and address of a health care provider whom
 6 the subject approves to receive the subject's test results
 7 and to provide the subject with posttest counseling; and
 8 (vi) if the consent is for a test being performed as
 9 part of an application for insurance, a statement that only
 10 a positive test result will be reported to the designated
 11 health care provider and that negative test results may be
 12 obtained by the subject from the insurance company.
 13 (b) The department shall develop a form agreement that
 14 may be used for purposes of this subsection."

15 **Section 2.** Section 50-16-1007, MCA, is amended to read:

16 **"50-16-1007. Testing -- counseling -- informed consent**
 17 **-- penalty. (1) ~~A person may not request an~~ An HIV-related**
 18 **test ~~without first~~ may be ordered only by a health care**
 19 **provider and only after receiving the written informed**
 20 **consent of:**
 21 (a) the subject of the test; or
 22 (b) the subject's legal guardian;
 23 (c) the subject's next-of-kin or significant other if:
 24 (i) the subject is unconscious or otherwise mentally
 25 incapacitated;

1 (ii) there is no legal guardian;
 2 (iii) there are medical indications of an HIV-related
 3 condition; and
 4 (iv) the test is advisable in order to determine the
 5 proper course of treatment of the subject; or
 6 (d) the subject's next-of-kin or significant other or
 7 the person, if any, designated by the subject in hospital
 8 records to act on the subject's behalf if:
 9 (i) the subject is in a hospital; and
 10 (ii) the circumstances in subsection (1)(c)(i) through
 11 (iv) exist.
 12 (2) ~~A~~ When a health care provider shall certify in
 13 writing orders an HIV-related test, he also certifies that
 14 informed consent has been received prior to requesting
 15 testing. ~~Testing may only be requested by a health care~~
 16 provider ordering an HIV-related test.
 17 ~~(2)(3) Prior to executing an informed consent~~
 18 agreement, Before the subject of the test executes an
 19 informed consent agreement, the health care provider
 20 ordering the test or his designee must give pretest
 21 counseling to:
 22 (a) the subject; or
 23 (b) the subject's legal guardian ~~must be given pretest~~
 24 counseling;
 25 (c) the subject's next-of-kin or significant other if:

1 (i) the subject is unconscious or otherwise mentally
 2 incapacitated; and
 3 (ii) there is no guardian; or
 4 (d) the subject's next-of-kin or significant other or
 5 the person, if any, designated by the subject in hospital
 6 records to act on the subject's behalf if:
 7 (i) the subject is in the hospital; and
 8 (ii) the circumstances in subsection (1)(c)(i) and (ii)
 9 exist.
 10 ~~{3}~~(4) A health care provider who does not provide
 11 HIV-related tests on an anonymous basis shall inform a each
 12 person who wishes to be tested anonymously that anonymous
 13 testing is available ~~at one of the counseling-testing sites~~
 14 ~~established by the department~~ AT ONE OF THE
 15 COUNSELING-TESTING SITES ESTABLISHED BY THE DEPARTMENT, OR
 16 elsewhere.
 17 ~~{4}~~(5) The subject of an HIV-related test or any of the
 18 subject's representatives authorized by subsection (1) to
 19 act in the subject's stead shall designate, as part of his
 20 written informed consent, a health care provider to receive
 21 the results of an HIV-related test. The designated health
 22 care provider must be given to the health care provider
 23 designated by the subject, who shall inform the subject or
 24 the subject's representative of the results in person.
 25 ~~{5}~~(6) At the time the subject of a test or the

1 subject's representative is given the test results, the
 2 health care provider or the provider's designee shall give
 3 the subject or the subject's representative must-be-provided
 4 with posttest counseling.
 5 (7) If a test is performed as part of an application
 6 for insurance, the insurance company must ensure that:
 7 (a) negative results can be obtained by the subject or
 8 his representative upon request; and
 9 (b) positive results are returned to the health care
 10 provider designated by the subject or his representative.
 11 ~~{6}~~(8) A minor may consent or refuse to consent to be
 12 the subject of an HIV-related test, pursuant to 41-1-402.
 13 ~~{7}~~(9) Subsections (1) through ~~{5}~~ (6) do not apply to:
 14 (a) the performance of an HIV-related test by a health
 15 care provider or health care facility that procures,
 16 processes, distributes, or uses a human body part donated
 17 for a purpose specified under Title 72, chapter 17, if the
 18 test is necessary to assure medical acceptability of the
 19 gift for the purposes intended;
 20 (b) the performance of an HIV-related test for the
 21 purpose of research if the testing is performed in a manner
 22 by which the identity of the test subject is not known and
 23 may not be retrieved by the researcher.
 24 (c) the performance of an HIV-related test when:
 25 (i) the subject of the test is unconscious or otherwise

1 mentally incapacitated;
 2 (ii) there are medical indications of an HIV-related
 3 condition;
 4 (iii) the test is advisable in order to determine the
 5 proper course of treatment of the subject; and
 6 (iv) none of the individuals listed in subsections
 7 (1)(b), (1)(c), or (1)(d) exists or is available within 24
 8 hours A REASONABLE TIME after the test is determined to be
 9 advisable; or
 10 (d) the performance of an HIV-related test conducted
 11 pursuant to 50-18-107 or 50-18-108, with the exception that
 12 the pretest and posttest counseling must still be given.
 13 (10) (A) IF AN AGENT OR EMPLOYEE OF A HEALTH CARE
 14 FACILITY, A HEALTH CARE PROVIDER WITH PRIVILEGES AT THE
 15 HEALTH CARE FACILITY, OR A FIRST-RESPONDER PERSON PROVIDING
 16 EMERGENCY SERVICES WHO IS DESCRIBED IN 50-16-702(1) HAS BEEN
 17 VOLUNTARILY OR INVOLUNTARILY EXPOSED TO A PATIENT IN A
 18 MANNER THAT MAY ALLOW INFECTION BY HIV BY A MODE OF
 19 TRANSMISSION RECOGNIZED BY THE CENTER FOR DISEASE CONTROL OF
 20 THE UNITED STATES PUBLIC HEALTH SERVICE, THE PHYSICIAN OF
 21 THE PATIENT SHALL, UPON REQUEST OF THE EXPOSED PERSON,
 22 NOTIFY THE PATIENT OF THE EXPOSURE AND SEEK WRITTEN INFORMED
 23 CONSENT IN ACCORDANCE WITH GUIDELINES OF THE CENTER FOR
 24 DISEASE CONTROL FOR AN HIV-RELATED TEST OF THE PATIENT. IF
 25 WRITTEN INFORMED CONSENT CANNOT BE OBTAINED, THE HEALTH CARE

1 FACILITY, IN ACCORDANCE WITH THE INFECTIOUS DISEASE EXPOSURE
 2 GUIDELINES OF THE HEALTH CARE FACILITY, MAY, WITHOUT THE
 3 CONSENT OF THE PATIENT, CONDUCT THE TEST ON PREVIOUSLY DRAWN
 4 BLOOD OR PREVIOUSLY COLLECTED BODILY FLUIDS TO DETERMINE IF
 5 THE PATIENT IS IN FACT INFECTED. A HEALTH CARE FACILITY IS
 6 NOT REQUIRED TO PERFORM A TEST AUTHORIZED IN THIS
 7 SUBSECTION. IF A TEST IS CONDUCTED PURSUANT TO THIS
 8 SUBSECTION, THE HEALTH CARE FACILITY SHALL INFORM THE
 9 PATIENT OF THE RESULTS AND PROVIDE THE PATIENT WITH POSTTEST
 10 COUNSELING. THE PATIENT MAY NOT BE CHARGED FOR A TEST
 11 PERFORMED PURSUANT TO THIS SUBSECTION. THE RESULTS OF A TEST
 12 PERFORMED PURSUANT TO THIS SUBSECTION MAY NOT BE MADE PART
 13 OF THE PATIENT'S RECORD AND ARE SUBJECT TO 50-16-1009(1).
 14 (B) FOR THE PURPOSES OF THIS SUBSECTION, "WRITTEN
 15 INFORMED CONSENT" MEANS AN AGREEMENT IN WRITING THAT IS
 16 FREELY EXECUTED BY THE SUBJECT OF AN HIV-RELATED TEST, BY
 17 THE SUBJECT'S LEGAL GUARDIAN, OR, IF THERE IS NO LEGAL
 18 GUARDIAN AND THE SUBJECT IS INCAPACITATED, BY THE SUBJECT'S
 19 NEXT-OF-KIN, SIGNIFICANT OTHER, OR A PERSON DESIGNATED BY
 20 THE SUBJECT IN HOSPITAL RECORDS TO ACT ON THE SUBJECT'S
 21 BEHALF.

22 (8)(11) A knowing or purposeful violation of this
 23 section is a misdemeanor punishable by a fine of \$1,000 or
 24 imprisonment for up to 6 months, or both."

25 **Section 3.** Section 50-16-1008, MCA, is amended to read:

1 **"50-16-1008. Testing of donors of organs, tissues, and**
 2 **semen required -- penalty. (1) ~~Immediately-prior~~ Prior** to
 3 **donation of an organ, semen, or tissues, HIV-related testing**
 4 **of a prospective donor, in accordance with nationally**
 5 **accepted standards adopted by the department by rule,** is
 6 **required unless the transplantation of an indispensable**
 7 **organ is necessary to save a patient's life and there is not**
 8 **sufficient time to perform an HIV-related test.**

9 (2) A knowing or purposeful violation of this section
 10 is a misdemeanor punishable by a fine of up to \$1,000 or
 11 imprisonment of up to 6 months, or both."

12 **Section 4.** Section 50-16-1009, MCA, is amended to read:

13 **"50-16-1009. Confidentiality of records -- notification**
 14 **of contacts -- penalty for unlawful disclosure.** (1) **A Except**
 15 **as provided in subsection (2),** person may not disclose or be
 16 **compelled to disclose the identity of a subject of an**
 17 **HIV-related test or the results of a test in a manner that**
 18 **permits identification of the subject of the test, except to**
 19 **the extent allowed under the Uniform Health Care Information**
 20 **Act, Title 50, chapter 16, part 5.**

21 (2) **A local board, local health officer, or the**
 22 **department may disclose the identity of the subject of an**
 23 **HIV-related test or the test results only to the extent**
 24 **allowed by the Government Health Care Information Act, Title**
 25 **50, chapter 16, part 6, unless it is in possession of that**

1 **information because a health care provider employed by it**
 2 **provided health care to the subject, in which case the**
 3 **Uniform Health Care Information Act governs the release of**
 4 **that information.**

5 (2)(3) If a health care provider informs the subject of
 6 an HIV-related test that the results are positive, the
 7 provider shall encourage the subject to notify persons **with**
 8 **whom--there--has--been--a--contact--capable--of--spreading--HIV who**
 9 **are potential contacts.** If the subject is unable or
 10 unwilling to notify all contacts, the health care provider
 11 may ask the subject to disclose voluntarily the identities
 12 of the contacts and to authorize notification of those
 13 contacts by a health care provider. A notification may state
 14 only that the contact may have been exposed to HIV and may
 15 not include the time or place of possible exposure or the
 16 identity of the subject of the test.

17 (4) **A person who discloses or compels another to**
 18 **disclose confidential health care information in violation**
 19 **of this section is guilty of a misdemeanor punishable by a**
 20 **fine of \$1,000 or imprisonment for 1 year, or both."**

21 **Section 5.** Section 50-16-1013, MCA, is amended to read:

22 **"50-16-1013. Civil remedy. (1) A person aggrieved by a**
 23 **violation of this part has a right of action in the district**
 24 **court and may recover for each violation:**

25 (a) against a person who negligently violates a

1 provision of this part, damages of ~~\$17,000~~ \$5,000 or actual
 2 damages, whichever is greater;

3 (b) against a person who intentionally or recklessly
 4 violates a provision of this part, damages of ~~\$5,000~~ \$20,000
 5 or actual damages, whichever is greater;

6 (c) reasonable attorney fees; and

7 (d) other appropriate relief, including injunctive
 8 relief.

9 (2) An action under this section must be commenced
 10 within 3 years after the cause of action accrues.

11 (3) The department may maintain a civil action to
 12 enforce this part in which the court may order any relief
 13 permitted under subsection (1).

14 (4) Nothing in this section limits the rights of a
 15 subject of an HIV-related test to recover damages or other
 16 relief under any other applicable law or cause of action.

17 (5) Nothing in this part may be construed to impose
 18 civil liability or criminal sanctions for disclosure of an
 19 HIV-related test result in accordance with any reporting
 20 requirement for a diagnosed case of AIDS or an HIV-related
 21 condition by the department or the centers for disease
 22 control of the United States public health service."

23 **Section 6.** Section 50-16-529, MCA, is amended to read:

24 "50-16-529. Disclosure without patient's authorization
 25 based on need to know. A health care provider may disclose

1 health care information about a patient without the
 2 patient's authorization, to the extent a recipient needs to
 3 know the information, if the disclosure is:

4 (1) to a person who is providing health care to the
 5 patient;

6 (2) to any other person who requires health care
 7 information for health care education; to provide planning,
 8 quality assurance, peer review, or administrative, legal,
 9 financial, or actuarial services to the health care
 10 provider; for assisting the health care provider in the
 11 delivery of health care; or to a third-party health care
 12 payor who requires health care information and if the health
 13 care provider reasonably believes that the person will:

14 (a) not use or disclose the health care information for
 15 any other purpose; and

16 (b) take appropriate steps to protect the health care
 17 information;

18 (3) to any other health care provider who has
 19 previously provided health care to the patient, to the
 20 extent necessary to provide health care to the patient,
 21 unless the patient has instructed the health care provider
 22 not to make the disclosure;

23 (4) to immediate family members of the patient or any
 24 other individual with whom the patient is known to have a
 25 close personal relationship, if made in accordance with the

1 laws of the state and good medical or other professional
2 practice, unless the patient has instructed the health care
3 provider not to make the disclosure;

4 (5) to a health care provider who is the successor in
5 interest to the health care provider maintaining the health
6 care information;

7 (6) for use in a research project that an institutional
8 review board has determined:

9 (a) is of sufficient importance to outweigh the
10 intrusion into the privacy of the patient that would result
11 from the disclosure;

12 (b) is impracticable without the use or disclosure of
13 the health care information in individually identifiable
14 form;

15 (c) contains reasonable safeguards to protect the
16 information from improper disclosure;

17 (d) contains reasonable safeguards to protect against
18 directly or indirectly identifying any patient in any report
19 of the research project; and

20 (e) contains procedures to remove or destroy at the
21 earliest opportunity, consistent with the purposes of the
22 project, information that would enable the patient to be
23 identified, unless an institutional review board authorizes
24 retention of identifying information for purposes of another
25 research project;

1 (7) to a person who obtains information for purposes of
2 an audit, if that person agrees in writing to:

3 (a) remove or destroy, at the earliest opportunity
4 consistent with the purpose of the audit, information that
5 would enable the patient to be identified; and

6 (b) not disclose the information further, except to
7 accomplish the audit or to report unlawful or improper
8 conduct involving fraud in payment for health care by a
9 health care provider or patient or other unlawful conduct by
10 a health care provider; and

11 (8) to an official of a penal or other custodial
12 institution in which the patient is detained; and

13 (9) to any person CONTACT, AS DEFINED IN 50-16-1003, if
14 the health care provider reasonably believes that disclosure
15 will avoid or minimize an imminent danger to the health or
16 safety of the patient CONTACT or any other individual."

17 **SECTION 7. SECTION 50-16-702, MCA, IS AMENDED TO READ:**

18 **"50-16-702. Report of unprotected exposure to disease.**

19 (1) A report may be filed, as provided in subsection (2), by
20 a person:

21 (a) employed by or acting as a volunteer with a public
22 or private organization that provides emergency services to
23 the public, including but not limited to a law enforcement
24 officer, firefighter, emergency medical technician,
25 corrections officer, or ambulance service attendant; and

1 (b) who, in his official capacity with the public or
2 private organization, attends or assists in transporting a
3 patient to a health care facility and believes he has
4 sustained an unprotected exposure.

5 (2) A person who qualifies in subsection (1) may submit
6 to the health care facility, on a form prescribed by the
7 department, a report of unprotected exposure that contains
8 his name and other information required by the department,
9 including a description of the unprotected exposure.

10 (3) If the exposure described in the report occurred in
11 a manner that may allow infection by HIV, as defined in
12 50-16-1003, by a mode of transmission recognized by the
13 center for disease control, then submission of the report to
14 the health care facility constitutes a request to the
15 patient's physician to seek consent for performance of an
16 HIV-related test pursuant to 50-16-1007(10)."

17 NEW SECTION. SECTION 8. SEVERABILITY. IF A PART OF
18 [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE
19 FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS
20 ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART
21 REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE
22 SEVERABLE FROM THE INVALID APPLICATIONS.

23 NEW SECTION. Section 9. Effective date. [This act] is
24 effective July 1, 1991.

-End-