

SENATE BILL NO. 437

INTRODUCED BY NORMAN, J. BROWN

IN THE SENATE

FEBRUARY 15, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON PUBLIC HEALTH, WELFARE & SAFETY.
	FIRST READING.
FEBRUARY 17, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 20, 1989	PRINTING REPORT.
	PASS CONSIDERATION.
FEBRUARY 21, 1989	SECOND READING, DO PASS AS AMENDED.
	ENGROSSING REPORT.
FEBRUARY 22, 1989	THIRD READING, PASSED. AYES, 47; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 22, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON HUMAN SERVICES & AGING.
FEBRUARY 28, 1989	FIRST READING.
MARCH 14, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 18, 1989	SECOND READING, CONCURRED IN AS AMENDED.
MARCH 21, 1989	THIRD READING, CONCURRED IN. AYES, 94; NOES, 0.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 3, 1989

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 5, 1989

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 Senate BILL NO. 437
2 INTRODUCED BY Norman J. Brown
3
4 A BILL FOR AN ACT ENTITLED: "THE AIDS PREVENTION ACT;
5 MANDATING THAT HIV ANTIBODY TESTING BE ADMINISTERED ONLY IN
6 CONJUNCTION WITH ADEQUATE PRETEST AND POSTTEST COUNSELING IN
7 ACCORDANCE WITH STANDARDS ESTABLISHED BY THE DEPARTMENT OF
8 HEALTH AND ENVIRONMENTAL SCIENCES; REQUIRING INFORMED
9 CONSENT FOR HIV ANTIBODY TESTING; LIMITING THE DISCLOSURE OF
10 THE RESULTS OF HIV ANTIBODY TESTING; REQUIRING HIV ANTIBODY
11 TESTING OF DONORS OF SEMEN AND HUMAN BODY PARTS; AND
12 AMENDING SECTIONS 50-16-529 AND 50-16-530, MCA."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 NEW SECTION. Section 1. short title. [Sections 1
16 through 7] may be cited as the "AIDS Prevention Act".

17 NEW SECTION. Section 2. Statement of purpose. (1) The
18 legislature recognizes that the epidemic of human
19 immunodeficiency virus (HIV) infection, the causative agent
20 of acquired immune deficiency syndrome (AIDS), and related
21 medical conditions constitutes a serious danger to the
22 public health and welfare. In the absence of a vaccine or a
23 cure and because of the sexual and intravenous drug use
24 behaviors by which the virus is spread, control of the
25 epidemic is dependent on a voluntary and informed change in

1 behavior of those infected or at risk for infection.

2 (2) The legislature further recognizes that the
3 necessary access of public health officials to the affected
4 population is impeded not only by the lengthy incubation
5 period of HIV infection that produces a symptomless,
6 therefore hidden, but communicable state of infection, but
7 also by barriers related to the social and legal standing of
8 those at risk. Fears of discriminatory or punitive
9 treatment, coupled with the absence of compelling symptoms,
10 cause many at risk to avoid coming forward to determine
11 their HIV infection status and to learn about ways in which
12 to prevent the spread of the virus.

13 (3) It is the intent of the legislature to reduce the
14 barriers that have made it difficult to deal with the
15 population at risk for HIV infection. The legislature finds
16 that measures that protect privacy, reduce the likelihood
17 and fear of discrimination and punitive treatment, and
18 provide risk reduction information for persons at risk are
19 necessary in entreating such individuals to come forward to
20 determine their HIV infection status, obtain early
21 treatment, and change behavior that puts them and others at
22 risk of infection.

23 NEW SECTION. Section 3. Definitions. As used in
24 [sections 1 through 7], the following definitions apply:

25 (1) "AIDS" means acquired immunodeficiency syndrome as

further defined by the board in accordance with standards promulgated by the centers for disease control of the United States public health service.

(2) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(3) "Contact" means an individual identified by the subject of an HIV-related test as a past or present sexual partner or as a person with whom the subject has shared hypodermic needles or syringes.

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

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

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

(7) "HIV-related test" means a laboratory test, including but not limited to an enzyme immunoassay and a western blot, that is designed to detect the presence of HIV or antibodies to HIV.

(8) "Health care facility" means a health care institution, private or public, including but not limited to

a hospital, nursing home, clinic, blood bank, blood center, sperm bank, or laboratory.

(9) "Health care provider" means a physician, nurse, paramedic, psychologist, dentist, public health department agent, or other person providing medical, nursing, psychological, or other health care services of any kind.

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

(11) "Person" means an individual, corporation, organization, or other legal entity.

(12) "Pretest counseling" means counseling from a counselor who is certified in HIV-related testing and counseling by the centers for disease control that includes:

(a) an explanation of the nature of HIV infection and the relationship between the HIV-related test results and the disease;

(b) information about behaviors known to pose risks for transmission of HIV infection and aimed at helping the individual understand ways to reduce the risk of HIV infection;

(c) counseling for coping with the emotional consequences of learning the HIV-related test results and referral for further assistance as necessary or desired by

1 the subject; and

2 (d) information regarding the importance of notifying
3 contacts in the event of a positive test result.

4 (13) "Posttest counseling" means counseling, conducted
5 at the time the HIV-related test results are given, that is
6 directed toward increasing the individual's understanding of
7 the HIV infection, changing the individual's behavior, and,
8 if necessary, encouraging the individual to notify or allow
9 notification of any contacts.

10 (14) "Release of test results" means a written
11 authorization for disclosure of HIV-related test results
12 that is signed and dated and that specifies the nature of
13 the information to be disclosed and to whom disclosure is
14 authorized.

15 (15) "Written informed consent" means an agreement in
16 writing freely executed by the subject of an HIV-related
17 test or the subject's legal guardian, without undue
18 inducement or any element of compulsion, fraud, deceit,
19 duress, or other form of constraint or coercion, that
20 includes at least the following:

21 (a) an explanation of the test, including its purpose,
22 potential uses, limitations, and the meaning of its results;
23 and

24 (b) an explanation of the procedures to be followed for
25 confidentiality, blood drawing, and counseling, including

1 notification that the test is voluntary, that consent may be
2 withdrawn at any time, and that the law prohibits health
3 care providers from refusing to provide health care services
4 solely because a prospective patient will not undergo an
5 HIV-related test;

6 (c) a discussion of whether and to whom the subject's
7 name and test results may be disclosed; and

8 (d) a statement that the test may be obtained
9 anonymously if the subject wishes.

10 NEW SECTION. **Section 4. Testing -- counseling --**
11 **informed consent -- penalty.** (1) A person may not perform an
12 HIV-related test without first receiving the written
13 informed consent of the subject of the test or the subject's
14 legal guardian. A health care provider shall certify in
15 writing that informed consent has been received prior to
16 ordering testing. Testing may only be performed by a health
17 care provider.

18 (2) Prior to executing an informed consent agreement,
19 the subject of the test or the subject's legal guardian must
20 be given pretest counseling.

21 (3) A health care provider who does not provide
22 HIV-related tests on an anonymous basis shall refer a person
23 who wishes to be tested anonymously to a test site that does
24 provide anonymous testing.

25 (4) The results of an HIV-related test must be given to

the subject of the test in person by a health care provider.

(5) At the time the subject of a test is given the test results, the subject must be provided with posttest counseling.

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

(7) Subsections (1) through (5) do not apply to:

(a) the performance of an HIV-related test by a health care provider or health care facility that procures, processes, distributes, or uses a human body part donated for a purpose specified under Title 72, chapter 17, if the test is necessary to assure medical acceptability of the gift for the purposes intended;

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

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

NEW SECTION. Section 5. Testing of donors of organs, tissues, and semen required -- penalty. (1) Except as provided in subsection (2), a prospective donor of organs, tissues, or semen shall undergo an HIV-related test.

(2) Testing of a prospective donor of an organ or

tissues is not required if the transplantation of an indispensable organ is necessary to save a patient's life and there is not sufficient time to perform an HIV-related test.

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

NEW SECTION. Section 6. Confidentiality of records -- penalty. (1) A person may not disclose or be compelled to disclose the identity of a subject of an HIV-related test or the results of a test in a manner that permits identification of the subject of the test, except to the following persons:

(a) the subject of the test or the subject's legal guardian;

(b) a person who secures a written release of test results executed by the subject of the test or the subject's legal guardian;

(c) a person to whom the subject of the test or the subject's legal guardian has authorized disclosure in writing;

(d) a person whose notification is authorized under subsection (2), except that only the test results may be disclosed, not the identity of the subject of the test;

(e) a minor's parent, custodian, or guardian pursuant

1 to 41-1-403;

2 (f) the subject's spouse;

3 (g) the department or the centers for disease control
4 of the United States public health service in accordance
5 with state and federal reporting requirements for a
6 diagnosed case of AIDS or another HIV-related condition; or

7 (h) a health care facility or health care provider that
8 procures, processes, distributes, or uses:

9 (i) a human body part from a deceased person pursuant
10 to Title 72, chapter 17, with respect to medical information
11 regarding that person; or

12 (ii) semen for the purpose of artificial insemination.

13 (2) If a health care provider informs the subject of an
14 HIV-related test that the results are positive, the provider
15 shall encourage the subject to notify persons with whom
16 there has been a contact capable of spreading HIV. If the
17 subject is unable or unwilling to notify all contacts, the
18 health care provider may ask the subject to disclose
19 voluntarily the identities of the contacts and to authorize
20 notification of those contacts by a health care provider.
21 The health care provider shall inform the subject that he is
22 under no legal obligation either to disclose names of
23 contacts or to authorize their notification. A notification
24 may state only that the contact may have been exposed to HIV
25 and may not include the time or place of possible exposure

1 or the identity of the subject of the test.

2 (3) A violation of this section is a misdemeanor
3 punishable by a fine of up to \$50,000 or imprisonment in a
4 county jail for up to 1 year, or both.

5 NEW SECTION. **Section 7. Civil remedy.** (1) A person
6 aggrieved by a violation of [sections 1 through 7] has a
7 right of action in the district court and may recover for
8 each violation:

9 (a) against a person who negligently violates a
10 provision of [sections 1 through 7], damages of \$1,000 or
11 actual damages, whichever is greater;

12 (b) against a person who intentionally or recklessly
13 violates a provision of [sections 1 through 7], damages of
14 \$5,000 or actual damages, whichever is greater;

15 (c) reasonable attorney fees; and

16 (d) other appropriate relief, including injunctive
17 relief.

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

20 (3) The attorney general may maintain a civil action to
21 enforce [sections 1 through 7] in which the court may order
22 any relief permitted under subsection (1).

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

1 (5) Nothing in [sections 1 through 7] may be construed
2 to impose civil liability or criminal sanctions for
3 disclosure of an HIV-related test result in accordance with
4 any reporting requirement for a diagnosed case of AIDS or an
5 HIV-related condition by the department or the centers for
6 disease control of the United States public health service.

7 **Section 8.** Section 50-16-529, MCA, is amended to read:

8 "50-16-529. Disclosure without patient's authorization
9 based on need to know. A Except as provided in [section 6],
10 a health care provider may disclose health care information
11 about a patient without the patient's authorization, to the
12 extent a recipient needs to know the information, if the
13 disclosure is:

14 (1) to a person who is providing health care to the
15 patient;

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

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

25 (b) take appropriate steps to protect the health care

1 information;

2 (3) to any other health care provider who has
3 previously provided health care to the patient, to the
4 extent necessary to provide health care to the patient,
5 unless the patient has instructed the health care provider
6 not to make the disclosure;

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

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

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

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

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

24 (c) contains reasonable safeguards to protect the
25 information from improper disclosure;

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

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

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

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

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

(8) to an official of a penal or other custodial institution in which the patient is detained."

Section 9. Section 50-16-530, MCA, is amended to read:

"50-16-530. Disclosure without patient's authorization -- other bases. A Except as provided in [section 6], a health care provider may disclose health care information

about a patient without the patient's authorization if the disclosure is:

(1) directory information, unless the patient has instructed the health care provider not to make the disclosure;

(2) to federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information or when needed to protect the public health;

(3) to federal, state, or local law enforcement authorities to the extent required by law;

(4) to a law enforcement officer about the general physical condition of a patient being treated in a health care facility if the patient was injured on a public roadway or was injured by the possible criminal act of another; or

(5) pursuant to compulsory process in accordance with 50-16-535 and 50-16-536."

NEW SECTION. Section 10. Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

End-

APPROVED BY COMMITTEE
ON PUBLIC HEALTH, WELFARE
& SAFETY

SENATE BILL NO. 437

INTRODUCED BY NORMAN, J. BROWN

A BILL FOR AN ACT ENTITLED: "THE AIDS PREVENTION ACT;
MANDATING THAT HIV ANTIBODY TESTING BE ADMINISTERED ONLY IN
CONJUNCTION WITH ADEQUATE PRETEST AND POSTTEST COUNSELING IN
ACCORDANCE WITH STANDARDS ESTABLISHED BY THE DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES; REQUIRING INFORMED
CONSENT FOR HIV ANTIBODY TESTING; LIMITING THE DISCLOSURE OF
THE RESULTS OF HIV ANTIBODY TESTING; REQUIRING HIV ANTIBODY
TESTING OF DONORS OF SEMEN AND HUMAN BODY PARTS; AND
AMENDING SECTIONS 50-16-529 AND 50-16-530, MCA."

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

NEW SECTION. **Section 1.** Short title. [Sections 1
through 7] may be cited as the "AIDS Prevention Act".

NEW SECTION. **Section 2.** Statement of purpose. (1) The
legislature recognizes that the epidemic of human
immunodeficiency virus (HIV) infection, the causative agent
of acquired immune deficiency syndrome (AIDS), and related
medical conditions constitutes a serious danger to the
public health and welfare. In the absence of a vaccine or a
cure and because of the sexual and intravenous drug use
behaviors by which the virus is PREDOMINATELY spread,
control of the epidemic is dependent on a voluntary and

informed change in behavior THE EDUCATION of those infected
or at risk for infection.

(2) The legislature further recognizes that the
necessary access of public health officials to the affected
population is impeded not only by the lengthy incubation
period of HIV infection that produces a symptomless,
therefore hidden, but communicable state of infection, but
also by barriers related to the social and legal standing of
those at risk. Fears of discriminatory or punitive
treatment, coupled with the absence of compelling symptoms,
cause many at risk to avoid coming forward to determine
their HIV infection status and to learn about ways in which
to prevent the spread of the virus.

(3) It is the intent of the legislature to reduce the
barriers that have made it difficult to deal with the
population at risk for HIV infection. The legislature finds
that measures that protect privacy, reduce the likelihood
and fear of discrimination and punitive treatment, and
provide risk reduction information for persons at risk are
necessary in entreating such individuals to come forward to
determine their HIV infection status, obtain early
treatment, and change behavior that puts them and others at
risk of infection.

(2) IT IS THE INTENT OF THE LEGISLATURE THAT EDUCATION
DIRECTED AT PREVENTING THE TRANSMISSION OF HIV BE PROVIDED

TO THOSE INFECTED AND AT RISK OF INFECTION AND TO ENTREAT
SUCH PERSONS TO COME FORWARD TO DETERMINE THEIR HIV
INFECTION STATUS AND TO OBTAIN APPROPRIATE EDUCATION.

NEW SECTION. Section 3. Definitions. As used in
[sections 1 through 7], the following definitions apply:

(1) "AIDS" means acquired immunodeficiency syndrome as
further defined by the board in accordance with standards
promulgated by the centers for disease control of the United
States public health service.

(2) "Board" means the board of health and
environmental sciences provided for in 2-15-2104.

(3) "Contact" means an individual identified by the
subject of an HIV-related test as a past or present sexual
partner or as a person with whom the subject has shared
hypodermic needles or syringes.

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

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

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

(7) "HIV-related test" means a laboratory test,
including but not limited to an enzyme immunoassay and a
western blot, that is designed to detect the presence of HIV
or antibodies to HIV.

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

(9) "Health care provider" means a physician, nurse,
paramedic, psychologist, dentist, public health department
agent, or other person providing medical, nursing,
psychological, or other health care services of any kind.

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

(11) "Person" means an individual, corporation,
organization, or other legal entity.

~~{12}--"Pretest--counseling"--means--counseling--from--a
counselor--who--is--certified--in--HIV-related--testing--and
counseling--by--the--centers--for--disease--control--that--includes:~~

~~{a)--an--explanation--of--the--nature--of--HIV--infection--and
the--relationship--between--the--HIV--related--test--results--and
the--disease;~~

~~{b)--information--about--behaviors--known--to--pose--risks~~

1 for-transmission-of-HIV-infection-and-aimed-at--helping--the
2 individual--understand--ways--to--reduce--the--risk--of--HIV
3 infection;

4 {c}--counseling---for---coping---with---the---emotional
5 consequences--of--learning--the-HIV-related-test-results-and
6 referral-for-further-assistance-as-necessary-or--desired--by
7 the-subject; and

8 {d}--information--regarding-the-importance-of-notifying
9 contacts-in-the-event-of-a-positive-test-result;

10 {f3}{12} "Posttest counseling" means counseling,
11 conducted at the time the HIV-related test results are
12 given, that-is-directed-toward-increasing--the--individual's
13 understanding---of---the---HIV---infection;---changing---the
14 individual's-behavior; and, if--necessary,--encouraging--the
15 individual--to--notify-or-allow-notification-of-any-contacts
16 AND INCLUDES WRITTEN MATERIALS PROVIDED BY THE DEPARTMENT.

17 {13} "PRETEST COUNSELING" MEANS THE PROVISION OF
18 WRITTEN MATERIALS TO THE SUBJECT PRIOR TO CONDUCT OF AN HIV
19 TEST. THE WRITTEN MATERIALS MUST BE DEVELOPED AND PROVIDED
20 BY THE DEPARTMENT.

21 {14} "Release of test results" means a written
22 authorization for disclosure of HIV-related test results
23 that is signed and dated and that specifies the nature of
24 the information to be disclosed and to whom disclosure is
25 authorized.

1 (15)(A) "Written informed consent" means an agreement
2 in writing freely executed by the subject of an HIV-related
3 test or the subject's legal guardian;---without---undue
4 inducement--or--any--element--of--compulsion; fraud; deceit;
5 duress; or--other--form--of--constraint--or--coercion; that
6 includes at least the following:

7 {a}{I} an explanation of the test, including its
8 purpose, potential uses, limitations, and the meaning of its
9 results; and

10 {b}{II} an explanation of the procedures to be followed
11 for confidentiality, blood drawing, and counseling,
12 including notification that the test is voluntary; AND that
13 consent may be withdrawn at any time;--and--that--the--law
14 prohibits--health--care--providers--from-refusing-to-provide
15 health-care-services-solely-because--a--prospective--patient
16 will-not-undergo-an-HIV-related-test;

17 {c}{III} a discussion of whether and to whom the
18 subject's name and test results may be disclosed; and

19 {d}{IV} a statement that the test may be obtained
20 anonymously if the subject wishes.

21 {B} THE DEPARTMENT SHALL DEVELOP A FORM AGREEMENT THAT
22 MAY BE USED FOR PURPOSES OF THIS SUBSECTION.

23 NEW SECTION. Section 4. Testing -- counseling --
24 informed consent -- penalty. (1) A person may not perform
25 REQUEST an HIV-related test without first receiving the

1 written informed consent of the subject of the test or the
2 subject's legal guardian. A health care provider shall
3 certify in writing that informed consent has been received
4 prior to ordering REQUESTING testing. Testing may only be
5 performed REQUESTED by a health care provider.

6 (2) Prior to executing an informed consent agreement,
7 the subject of the test or the subject's legal guardian must
8 be given pretest counseling.

9 (3) A health care provider who does not provide
10 HIV-related tests on an anonymous basis shall ~~refer~~ INFORM a
11 person who wishes to be tested anonymously ~~to--a--test--site~~
12 ~~that--does--provide-anonymous-testing~~ THAT ANONYMOUS TESTING
13 IS AVAILABLE AT ONE OF THE COUNSELING TESTING SITES
14 ESTABLISHED BY THE DEPARTMENT.

15 (4) The results of an HIV-related test must be given
16 ~~to the subject of the test in person by a~~ THE health care
17 provider DESIGNATED BY THE SUBJECT, WHO SHALL INFORM THE
18 SUBJECT OF THE RESULTS IN PERSON.

19 (5) At the time the subject of a test is given the
20 test results, the subject must be provided with posttest
21 counseling.

22 (6) A minor may consent or refuse to consent to be the
23 subject of an HIV-related test, pursuant to 41-1-402.

24 (7) Subsections (1) through (5) do not apply to:

25 (a) the performance of an HIV-related test by a health

1 care provider or health care facility that procures,
2 processes, distributes, or uses a human body part donated
3 for a purpose specified under Title 72, chapter 17, if the
4 test is necessary to assure medical acceptability of the
5 gift for the purposes intended;

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

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

13 NEW SECTION. Section 5. Testing of donors of organs,
14 tissues, and semen required -- penalty. (1) Except as
15 provided in subsection (2), a prospective donor of organs,
16 tissues, or semen shall undergo an HIV-related test.

17 (2) Testing of a prospective donor of an organ or
18 tissues is not required if the transplantation of an
19 indispensable organ is necessary to save a patient's life
20 and there is not sufficient time to perform an HIV-related
21 test.

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

25 NEW SECTION. Section 6. Confidentiality of records --

penalty. (1) A person may not disclose or be compelled to disclose the identity of a subject of an HIV-related test or the results of a test in a manner that permits identification of the subject of the test, except to the following persons:

(a) the subject of the test or the subject's legal guardian;

(b) a person who secures a written release of test results executed by the subject of the test or the subject's legal guardian;

(c) a person to whom the subject of the test or the subject's legal guardian has authorized disclosure in writing;

(d) a person whose notification is authorized under subsection (2), except that only the test results may be disclosed, not the identity of the subject of the test;

(e) a minor's parent, custodian, or guardian pursuant to 41-1-403;

(f) the subject's spouse;

(g) the department or the centers for disease control of the United States public health service in accordance with state and federal reporting requirements for a diagnosed case of AIDS or another HIV-related condition; or

(h) a health care facility or health care provider that procures, processes, distributes, or uses:

(i) a human body part from a deceased person pursuant to Title 72, chapter 17, with respect to medical information regarding that person; or

(ii) semen for the purpose of artificial insemination.

(2) If a health care provider informs the subject of an HIV-related test that the results are positive, the provider shall encourage the subject to notify persons with whom there has been a contact capable of spreading HIV. If the subject is unable or unwilling to notify all contacts, the health care provider may ask the subject to disclose voluntarily the identities of the contacts and to authorize notification of those contacts by a health care provider. ~~The health care provider shall inform the subject that he is under no legal obligation either to disclose names of contacts or to authorize their notification.~~ A notification may state only that the contact may have been exposed to HIV and may not include the time or place of possible exposure or the identity of the subject of the test.

~~(3) A violation of this section is a misdemeanor punishable by a fine of up to \$50,000 or imprisonment in a county jail for up to 1 year, or both.~~

NEW SECTION. **Section 7. Civil remedy.** (1) A person aggrieved by a violation of [sections 1 through 7] has a right of action in the district court and may recover for each violation:

(a) against a person who negligently violates a provision of [sections 1 through 7], damages of \$1,000 or actual damages, whichever is greater;

(b) against a person who intentionally or recklessly violates a provision of [sections 1 through 7], damages of \$5,000 or actual damages, whichever is greater;

(c) reasonable attorney fees; and

(d) other appropriate relief, including injunctive relief.

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

(3) The attorney general may maintain a civil action to enforce [sections 1 through 7] in which the court may order any relief permitted under subsection (1).

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

(5) Nothing in [sections 1 through 7] may be construed to impose civil liability or criminal sanctions for disclosure of an HIV-related test result in accordance with any reporting requirement for a diagnosed case of AIDS or an HIV-related condition by the department or the centers for disease control of the United States public health service.

Section 8. Section 50-16-529, MCA, is amended to read:

"50-16-529. Disclosure without patient's authorization

based on need to know. A Except as provided in [section 6], a health care provider may disclose health care information about a patient without the patient's authorization, to the extent a recipient needs to know the information, if the disclosure is:

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

(2) to any other person who requires health care information for health care education; to provide planning, quality assurance, peer review, or administrative, legal, financial, or actuarial services to the health care provider; or for assisting the health care provider in the delivery of health care and if the health care provider reasonably believes that the person will:

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

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

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

(4) to immediate family members of the patient or any other individual with whom the patient is known to have a

1 close personal relationship, if made in accordance with the
2 laws of the state and good medical or other professional
3 practice, unless the patient has instructed the health care
4 provider not to make the disclosure;

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

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

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

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

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

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

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

1 research project;

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

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

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

12 (8) to an official of a penal or other custodial
13 institution in which the patient is detained."

14 **Section 9.** Section 50-16-530, MCA, is amended to read:

15 "50-16-530. Disclosure without patient's authorization
16 -- other bases. A Except as provided in [section 6], a
17 health care provider may disclose health care information
18 about a patient without the patient's authorization if the
19 disclosure is:

20 (1) directory information, unless the patient has
21 instructed the health care provider not to make the
22 disclosure;

23 (2) to federal, state, or local public health
24 authorities, to the extent the health care provider is
25 required by law to report health care information or when

1 needed to protect the public health;
2 (3) to federal, state, or local law enforcement
3 authorities to the extent required by law;
4 (4) to a law enforcement officer about the general
5 physical condition of a patient being treated in a health
6 care facility if the patient was injured on a public roadway
7 or was injured by the possible criminal act of another; or
8 (5) pursuant to compulsory process in accordance with
9 50-16-535 and 50-16-536."

10 NEW SECTION. **Section 10.** Extension of authority. Any
11 existing authority to make rules on the subject of the
12 provisions of [this act] is extended to the provisions of
13 [this act].

-End-

1 House BILL NO. 437
 2 INTRODUCED BY Jeffrey S. Gandy
 3 Jeffrey S. Gandy
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS
 5 GOVERNING THE PRACTICE OF PODIATRY BY DEFINING THE SCOPE OF
 6 PODIATRY PRACTICE; AND AMENDING SECTIONS 37-6-101 AND
 7 37-6-102, MCA."

8
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 **Section 1.** Section 37-6-101, MCA, is amended to read:

11 "37-6-101. Definitions. Unless the context requires
 12 otherwise, in this chapter the following definitions apply:
 13 ~~{1}--"Podiatry"--means the diagnosis, medical, surgical,~~
 14 ~~mechanical, manipulative, and electrical treatment of~~
 15 ~~ailments of the human foot;~~

16 ~~{2}{1}~~ "Podiatrist" means a physician or surgeon of
 17 the foot, licensed to treat ailments of the foot.

18 ~~{3}{2}~~ "Board" means the board of medical examiners
 19 provided for in 2-15-1841.

20 ~~{4}{3}~~ "Department" means the department of commerce
 21 provided for in Title 2, chapter 15, part 18."

22 **Section 2.** Section 37-6-102, MCA, is amended to read:

23 "37-6-102. ~~Limitation on~~ Scope of practice. (1) A
 24 podiatrist may treat ailments of the human functional foot
 25 ~~or toe but may not amputate the human foot or toe or by all~~

1 systems and means. The functional foot is the anatomical
 2 foot and any muscle, tendon, ligament, or other soft tissue
 3 structure that is directly attached to the anatomical foot
 4 and that impacts on or affects the foot or foot function.

5 (2) A podiatrist may not administer any anesthetic
 6 other than a local anesthetic."

7 NEW SECTION. Section 3. Extension of authority. Any
 8 existing authority to make rules on the subject of the
 9 provisions of [this act] is extended to the provisions of
 10 [this act].

-End-

SENATE BILL NO. 437

INTRODUCED BY NORMAN, J. BROWN

A BILL FOR AN ACT ENTITLED: "THE AIDS PREVENTION ACT;
MANDATING THAT HIV ANTIBODY TESTING BE ADMINISTERED ONLY IN
CONJUNCTION WITH ADEQUATE PRETEST AND POSTTEST COUNSELING IN
ACCORDANCE WITH STANDARDS ESTABLISHED BY THE DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES; REQUIRING INFORMED
CONSENT FOR HIV ANTIBODY TESTING; LIMITING THE DISCLOSURE OF
THE RESULTS OF HIV ANTIBODY TESTING PROVIDING FOR
CONFIDENTIALITY OF HIV TEST RESULTS IN A MANNER CONSISTENT
WITH THE REQUIREMENTS OF THE UNIFORM HEALTH CARE INFORMATION
ACT; AND REQUIRING HIV ANTIBODY TESTING OF DONORS OF SEMEN
AND HUMAN BODY PARTS; AND AMENDING SECTIONS 50-16-529 AND
50-16-530, MCA."

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

NEW SECTION. Section 1. Short title. [Sections 1
through 7] may be cited as the "AIDS Prevention Act".

NEW SECTION. Section 2. Statement of purpose. (1) The
legislature recognizes that the epidemic of human
immunodeficiency virus (HIV) infection, the causative agent
of acquired immune deficiency syndrome (AIDS), and related
medical conditions constitutes a serious danger to the
public health and welfare. In the absence of a vaccine or a

cure and because of the sexual and intravenous drug use
behaviors by which the virus is PREDOMINATELY spread,
control of the epidemic is dependent on a voluntary and
informed change in behavior THE EDUCATION of those infected
or at risk for infection.

{2} The legislature further recognizes that the
necessary access of public health officials to the affected
population is impeded not only by the lengthy incubation
period of HIV infection that produces a symptomless,
therefore hidden, but communicable state of infection, but
also by barriers related to the social and legal standing of
those at risk. Fears of discriminatory or punitive
treatment, coupled with the absence of compelling symptoms,
cause many at risk to avoid coming forward to determine
their HIV infection status and to learn about ways in which
to prevent the spread of the virus.

{3} It is the intent of the legislature to reduce the
barriers that have made it difficult to deal with the
population at risk for HIV infection. The legislature finds
that measures that protect privacy, reduce the likelihood
and fear of discrimination and punitive treatment, and
provide risk reduction information for persons at risk are
necessary in entreatying such individuals to come forward to
determine their HIV infection status, obtain early
treatment, and change behavior that puts them and others at

1 ~~risk-of-infection.~~

2 (2) IT IS THE INTENT OF THE LEGISLATURE THAT EDUCATION
3 DIRECTED AT PREVENTING THE TRANSMISSION OF HIV BE PROVIDED
4 TO THOSE INFECTED AND AT RISK OF INFECTION AND TO ENTREAT
5 SUCH PERSONS TO COME FORWARD TO DETERMINE THEIR HIV
6 INFECTION STATUS AND TO OBTAIN APPROPRIATE EDUCATION.

7 NEW SECTION. Section 3. Definitions. As used in
8 [sections 1 through 7], the following definitions apply:

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

13 (2) "Board" means the board of health and
14 environmental sciences provided for in 2-15-2104.

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

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

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

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

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

8 (8) "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 (9) "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 (10) "Legal guardian" means a person appointed by a
17 court to assume legal authority for another who has been
18 found incapacitated or, in the case of a minor, a person who
19 has legal custody of the minor.

20 (11) "Person" means an individual, corporation,
21 organization, or other legal entity.

22 ~~{12}--"Pretest--counseling"--means--counseling--from--a~~
23 ~~counselor--who--is--certified--in--HIV-related--testing--and~~
24 ~~counseling--by--the--centers--for--disease--control--that--includes--~~
25 ~~{a}--an--explanation--of--the--nature--of--HIV--infection--and~~

1 the-relationship-between-the-HIV-related--test--results--and
 2 the-disease;
 3 {b}--information--about--behaviors--known-to-pose-risks
 4 for-transmission-of-HIV-infection-and-aimed-at--helping--the
 5 individual--understand--ways--to--reduce--the--risk--of--HIV
 6 infection;
 7 {c}--counseling---for---coping---with---the---emotional
 8 consequences--of--learning--the-HIV-related-test-results-and
 9 referral-for-further-assistance-as-necessary-or--desired--by
 10 the-subject; and
 11 {d}--information--regarding-the-importance-of-notifying
 12 contacts-in-the-event-of-a-positive-test-result;
 13 {13}{12} "Posttest counseling" means counseling,
 14 conducted at the time the HIV-related test results are
 15 given, that-is-directed-toward-increasing--the--individual's
 16 understanding---of---the---HIV---infection;---changing---the
 17 individual's-behavior; and, if--necessary;---encouraging--the
 18 individual--to--notify-or-allow-notification-of-any-contacts
 19 AND INCLUDES WRITTEN MATERIALS PROVIDED BY THE DEPARTMENT.
 20 {13} "PRETEST COUNSELING" MEANS THE PROVISION OF
 21 WRITTEN MATERIALS TO THE SUBJECT PRIOR TO CONDUCT OF AN HIV
 22 TEST. THE WRITTEN MATERIALS MUST BE DEVELOPED AND PROVIDED
 23 BY THE DEPARTMENT.
 24 {14} "Release of test results" means a written
 25 authorization for disclosure of HIV-related test results

1 that is signed and dated and that specifies the nature of
 2 the information to be disclosed and to whom disclosure is
 3 authorized.
 4 {15}{A} "Written informed consent" means an agreement
 5 in writing freely executed by the subject of an HIV-related
 6 test or the subject's legal guardian;---without---undue
 7 inducement--or--any--element--of--compulsion; fraud; deceit;
 8 duress; or--other--form--of--constraint--or--coercion; that
 9 includes at least the following:
 10 {a}{I} an explanation of the test, including its
 11 purpose, potential uses, limitations, and the meaning of its
 12 results; and
 13 {b}{II} an explanation of the procedures to be followed
 14 for confidentiality, blood drawing, and counseling,
 15 including notification that the test is voluntary; AND that
 16 consent may be withdrawn at any time; and--that--the--law
 17 prohibits--health--care--providers--from-refusing-to-provide
 18 health-care-services-solely-because--a--prospective--patient
 19 will-not-undergo-an-HIV-related-test;
 20 {c}{III} a discussion of whether and to whom the
 21 subject's name and test results may be disclosed; and
 22 {d}{IV} a statement that the test may be obtained
 23 anonymously if the subject wishes.
 24 {B} THE DEPARTMENT SHALL DEVELOP A FORM AGREEMENT THAT
 25 MAY BE USED FOR PURPOSES OF THIS SUBSECTION.

1 **NEW SECTION. Section 4. Testing -- counseling --**
 2 **informed consent -- penalty.** (1) A person may not perform
 3 REQUEST an HIV-related test without first receiving the
 4 written informed consent of the subject of the test or the
 5 subject's legal guardian. A health care provider shall
 6 certify in writing that informed consent has been received
 7 prior to ordering REQUESTING testing. Testing may only be
 8 performed REQUESTED by a health care provider.

9 (2) Prior to executing an informed consent agreement,
 10 the subject of the test or the subject's legal guardian must
 11 be given pretest counseling.

12 (3) A health care provider who does not provide
 13 HIV-related tests on an anonymous basis shall refer INFORM a
 14 person who wishes to be tested anonymously to--a--test--site
 15 that--does--provide-anonymous-testing THAT ANONYMOUS TESTING
 16 IS AVAILABLE AT ONE OF THE COUNSELING TESTING SITES
 17 ESTABLISHED BY THE DEPARTMENT.

18 (4) The results of an HIV-related test must be given
 19 to the-subject-of-the-test-in-person-by-a THE health care
 20 provider DESIGNATED BY THE SUBJECT, WHO SHALL INFORM THE
 21 SUBJECT OF THE RESULTS IN PERSON.

22 (5) At the time the subject of a test is given the
 23 test results, the subject must be provided with posttest
 24 counseling.

25 (6) A minor may consent or refuse to consent to be the

1 subject of an HIV-related test, pursuant to 41-1-402.

2 (7) Subsections (1) through (5) do not apply to:

3 (a) the performance of an HIV-related test by a health
 4 care provider or health care facility that procures,
 5 processes, distributes, or uses a human body part donated
 6 for a purpose specified under Title 72, chapter 17, if the
 7 test is necessary to assure medical acceptability of the
 8 gift for the purposes intended;

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

13 (8) A knowing or purposeful violation of this section
 14 is a misdemeanor punishable by a fine of \$1,000 or
 15 imprisonment for up to 6 months, or both.

16 **NEW SECTION. Section 5. Testing of donors of organs,**
 17 **tissues, and semen required -- penalty.** (1) Except as
 18 provided in subsection (2), a prospective donor of organs,
 19 tissues, or semen shall undergo an HIV-related test.

20 (2) Testing of a prospective donor of an organ or
 21 tissues is not required if the transplantation of an
 22 indispensable organ is necessary to save a patient's life
 23 and there is not sufficient time to perform an HIV-related
 24 test.

25 (3) A knowing or purposeful violation of this section

is a misdemeanor punishable by a fine of up to \$1,000 or imprisonment of up to 6 months, or both.

NEW SECTION. Section 6. Confidentiality of records — penalty. (1) A person may not disclose or be compelled to disclose the identity of a subject of an HIV-related test or the results of a test in a manner that permits identification of the subject of the test, except to the following persons: EXTENT ALLOWED UNDER THE UNIFORM HEALTH CARE INFORMATION ACT, TITLE 50, CHAPTER 16, PART 5.

(a) the subject of the test or the subject's legal guardian;

(b) a person who secures a written release of test results executed by the subject of the test or the subject's legal guardian;

(c) a person to whom the subject of the test or the subject's legal guardian has authorized disclosure in writing;

(d) a person whose notification is authorized under subsection (2) except that only the test results may be disclosed, not the identity of the subject of the test;

(e) a minor's parent, custodian, or guardian pursuant to 41-1-403;

(f) the subject's spouse;

(g) the department or the centers for disease control of the United States public health service in accordance

with state and federal reporting requirements for a diagnosed case of AIDS or another HIV-related condition, or

(h) a health care facility or health care provider that procures, processes, distributes, or uses:

(i) a human body part from a deceased person pursuant to Title 72, chapter 17, with respect to medical information regarding that person; or

(ii) semen for the purpose of artificial insemination.

(2) If a health care provider informs the subject of an HIV-related test that the results are positive, the provider shall encourage the subject to notify persons with whom there has been a contact capable of spreading HIV. If the subject is unable or unwilling to notify all contacts, the health care provider may ask the subject to disclose voluntarily the identities of the contacts and to authorize notification of those contacts by a health care provider. The health care provider shall inform the subject that he is under no legal obligation either to disclose names of contacts or to authorize their notification. A notification may state only that the contact may have been exposed to HIV and may not include the time or place of possible exposure or the identity of the subject of the test.

(3) A violation of this section is a misdemeanor punishable by a fine of up to \$50,000 or imprisonment in a county jail for up to 1 year or both.

NEW SECTION. Section 7. Civil remedy. (1) A person aggrieved by a violation of [sections 1 through 7] has a right of action in the district court and may recover for each violation:

(a) against a person who negligently violates a provision of [sections 1 through 7], damages of \$1,000 or actual damages, whichever is greater;

(b) against a person who intentionally or recklessly violates a provision of [sections 1 through 7], damages of \$5,000 or actual damages, whichever is greater;

(c) reasonable attorney fees; and

(d) other appropriate relief, including injunctive relief.

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

(3) The attorney general may maintain a civil action to enforce [sections 1 through 7] in which the court may order any relief permitted under subsection (1).

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

(5) Nothing in [sections 1 through 7] may be construed to impose civil liability or criminal sanctions for disclosure of an HIV-related test result in accordance with any reporting requirement for a diagnosed case of AIDS or an

HIV-related condition by the department or the centers for disease control of the United States public health service.

Section 8. ~~Section 50-16-529, MCA, is amended to read:~~

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

~~(1)--to a person who is providing health care to the patient;~~

~~(2)--to any other person who requires health care information for health care education, to provide planning, quality assurance, peer review, or administrative, legal, financial, or actuarial services to the health care provider; or for assisting the health care provider in the delivery of health care and if the health care provider reasonably believes that the person will:~~

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

~~(b)--take appropriate steps to protect the health care information;~~

~~(3)--to any other health care provider who has previously provided health care to the patient, to the extent necessary to provide health care to the patient;~~

unless the patient has instructed the health care provider not to make the disclosure;

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

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

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

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

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

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

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

(e) contains procedures to remove or destroy at the

earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project;

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

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

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

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(1) directory information, unless the patient has instructed the health care provider not to make the

disclosure;

(2)--to---federal;---state;---or---local---public---health
authorities; to the extent the health care provider is
required by law to report health care information or when
needed to protect the public health;

(3)--to---federal;---state;---or---local---law---enforcement
authorities to the extent required by law;

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physical condition of a patient being treated in a health
care facility if the patient was injured on a public roadway
or was injured by the possible criminal act of another; or

(5)--pursuant to compulsory process in accordance with
50-16-535 and 50-16-536;"

NEW SECTION. **Section 8.** Extension of authority. Any
existing authority to make rules on the subject of the
provisions of [this act] is extended to the provisions of
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-End-

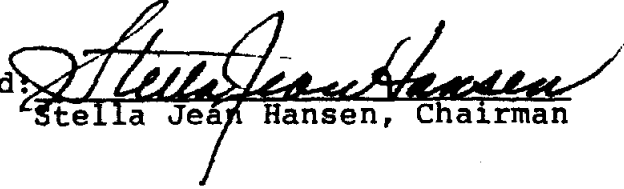
STANDING COMMITTEE REPORT

March 14, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Human Services and Aging report that SENATE BILL 437 (third reading copy -- blue) be concurred in as amended .

Signed:


Stella Jean Hansen, Chairman

[REP. JAN BROWN WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Page 8, lines 17 through 21.

Following: "(1)"

Strike: remainder of line 17 through "if" on line 21

Insert: "Immediately prior to donation of an organ, semen, or tissues, HIV-related testing of a prospective donor is required unless"

Renumber: subsequent subsection

2. Page 11, line 16.

Strike: "attorney general"

Insert: "department"

SB 437
HOUSE

SENATE BILL NO. 437

INTRODUCED BY NORMAN, J. BROWN

A BILL FOR AN ACT ENTITLED: "THE AIDS PREVENTION ACT;
MANDATING THAT HIV ANTIBODY TESTING BE ADMINISTERED ONLY IN
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of acquired immune deficiency syndrome (AIDS), and related
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public health and welfare. In the absence of a vaccine or a

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behaviors by which the virus is PREDOMINATELY spread,
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(2) The legislature further recognizes that the
necessary access of public health officials to the affected
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period of HIV infection that produces a symptomless,
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those at risk. Fears of discriminatory or punitive
treatment, coupled with the absence of compelling symptoms,
cause many at risk to avoid coming forward to determine
their HIV infection status and to learn about ways in which
to prevent the spread of the virus.

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barriers that have made it difficult to deal with the
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that measures that protect privacy, reduce the likelihood
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1 ~~risk-of-infection:~~

2 (2) IT IS THE INTENT OF THE LEGISLATURE THAT EDUCATION
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4 TO THOSE INFECTED AND AT RISK OF INFECTION AND TO ENTREAT
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6 INFECTION STATUS AND TO OBTAIN APPROPRIATE EDUCATION.

7 NEW SECTION. Section 3. Definitions. As used in
8 [sections 1 through 7], the following definitions apply:

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

13 ~~{2}--"Board"---means---the---board---of---health---and~~
14 ~~environmental-sciences-provided-for-in-2-15-2104.~~

15 ~~{3}{2}~~ (2) "Contact" means an individual identified by the
16 subject of an HIV-related test as a past or present sexual
17 partner or as a person with whom the subject has shared
18 hypodermic needles or syringes.

19 ~~{4}{3}~~ (3) "Department" means the department of health and
20 environmental sciences provided for in 2-15-2101.

21 ~~{5}{4}~~ (4) "HIV" means the human immunodeficiency virus,
22 identified as the causative agent of AIDS, and all HIV and
23 HIV-related viruses that damage the cellular branch of the
24 human immune or neurological systems and leave the infected
25 person immunodeficient or neurologically impaired.

1 ~~{6}{5}~~ (5) "HIV-related condition" means a chronic disease
2 resulting from infection with HIV, including but not limited
3 to AIDS and asymptomatic seropositivity for HIV.

4 ~~{7}{6}~~ (6) "HIV-related test" means a laboratory test,
5 including but not limited to an enzyme immunoassay and a
6 western blot, that is designed to detect the presence of HIV
7 or antibodies to HIV.

8 ~~{8}{7}~~ (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 ~~{9}{8}~~ (8) "Health care provider" means a physician,
13 nurse, paramedic, psychologist, dentist, public health
14 department agent, or other person providing medical,
15 nursing, psychological, or other health care services of any
16 kind.

17 ~~{10}{9}~~ (9) "Legal guardian" means a person appointed by a
18 court to assume legal authority for another who has been
19 found incapacitated or, in the case of a minor, a person who
20 has legal custody of the minor.

21 ~~{11}{10}~~ (10) "Person" means an individual, corporation,
22 organization, or other legal entity.

23 ~~{12}--"Pretest--counseling"--means- counseling--from--a~~
24 ~~counselor--who--is--certified--in--HIV-related--testing--and~~
25 ~~counseling-by-the-centers-for-disease-control-that-includes-~~

(a) an explanation of the nature of HIV infection and the relationship between the HIV-related test results and the disease;

(b) information about behaviors known to pose risks for transmission of HIV infection and aimed at helping the individual understand ways to reduce the risk of HIV infection;

(c) counseling for coping with the emotional consequences of learning the HIV-related test results and referral for further assistance as necessary or desired by the subject; and

(d) information regarding the importance of notifying contacts in the event of a positive test result.

(13)(11) "Posttest counseling" means counseling, conducted at the time the HIV-related test results are given, that is directed toward increasing the individual's understanding of the HIV infection, changing the individual's behavior, and, if necessary, encouraging the individual to notify or allow notification of any contacts AND INCLUDES WRITTEN MATERIALS PROVIDED BY THE DEPARTMENT.

(13)(12) "PRETEST COUNSELING" MEANS THE PROVISION OF WRITTEN MATERIALS TO THE SUBJECT PRIOR TO CONDUCT OF AN HIV TEST. THE WRITTEN MATERIALS MUST BE DEVELOPED AND PROVIDED BY THE DEPARTMENT.

(14)(13) "Release of test results" means a written

authorization for disclosure of HIV-related test results that is signed and dated and that specifies the nature of the information to be disclosed and to whom disclosure is authorized.

(15)(14) (A) "Written informed consent" means an agreement in writing freely executed by the subject of an HIV-related test or the subject's legal guardian, without undue inducement or any element of compulsion, fraud, deceit, duress, or other form of constraint or coercion, that includes at least the following:

(a)(I) an explanation of the test, including its purpose, potential uses, limitations, and the meaning of its results; and

(b)(II) an explanation of the procedures to be followed for confidentiality, blood drawing, and counseling, including notification that the test is voluntary, AND that consent may be withdrawn at any time, and that the law prohibits health care providers from refusing to provide health care services solely because a prospective patient will not undergo an HIV-related test;

(c)(III) a discussion of whether and to whom the subject's name and test results may be disclosed; and

(d)(IV) a statement that the test may be obtained anonymously if the subject wishes.

(B) THE DEPARTMENT SHALL DEVELOP A FORM AGREEMENT THAT

1 MAY BE USED FOR PURPOSES OF THIS SUBSECTION.

2 NEW SECTION. Section 4. Testing -- counseling --
 3 informed consent -- penalty. (1) A person may not perform
 4 REQUEST an HIV-related test without first receiving the
 5 written informed consent of the subject of the test or the
 6 subject's legal guardian. A health care provider shall
 7 certify in writing that informed consent has been received
 8 prior to ordering REQUESTING testing. Testing may only be
 9 performed REQUESTED by a health care provider.

10 (2) Prior to executing an informed consent agreement,
 11 the subject of the test or the subject's legal guardian must
 12 be given pretest counseling.

13 (3) A health care provider who does not provide
 14 HIV-related tests on an anonymous basis shall refer INFORM a
 15 person who wishes to be tested anonymously to ~~a test site~~
 16 ~~that does provide anonymous testing~~ THAT ANONYMOUS TESTING
 17 IS AVAILABLE AT ONE OF THE COUNSELING TESTING SITES
 18 ESTABLISHED BY THE DEPARTMENT.

19 (4) The results of an HIV-related test must be given
 20 to ~~the subject of the test in person by a~~ THE health care
 21 provider DESIGNATED BY THE SUBJECT, WHO SHALL INFORM THE
 22 SUBJECT OF THE RESULTS IN PERSON.

23 (5) At the time the subject of a test is given the
 24 test results, the subject must be provided with posttest
 25 counseling.

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

3 (7) Subsections (1) through (5) do not apply to:

4 (a) the performance of an HIV-related test by a health
 5 care provider or health care facility that procures,
 6 processes, distributes, or uses a human body part donated
 7 for a purpose specified under Title 72, chapter 17, if the
 8 test is necessary to assure medical acceptability of the
 9 gift for the purposes intended;

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

14 (8) A knowing or purposeful violation of this section
 15 is a misdemeanor punishable by a fine of \$1,000 or
 16 imprisonment for up to 6 months, or both.

17 NEW SECTION. Section 5. Testing of donors of organs,
 18 organs, tissues, and semen required -- penalty. (1) ~~Except as~~
 19 ~~provided in subsection (2), a prospective donor of organs,~~
 20 ~~organs, tissues, or semen shall undergo an HIV-related test.~~

21 ~~(2) Testing of a prospective donor of an organ or~~
 22 ~~tissues is not required if~~ IMMEDIATELY PRIOR TO DONATION OF
 23 AN ORGAN, SEMEN, OR TISSUES, HIV-RELATED TESTING OF A
 24 PROSPECTIVE DONOR IS REQUIRED UNLESS the transplantation of
 25 an indispensable organ is necessary to save a patient's life

1 and there is not sufficient time to perform an HIV-related
2 test.

3 {3}(2) A knowing or purposeful violation of this
4 section is a misdemeanor punishable by a fine of up to
5 \$1,000 or imprisonment of up to 6 months, or both.

6 NEW SECTION. Section 6. Confidentiality of records —
7 penalty. (1) A person may not disclose or be compelled to
8 disclose the identity of a subject of an HIV-related test or
9 the results of a test in a manner that permits
10 identification of the subject of the test, except to the
11 following persons: EXTENT ALLOWED UNDER THE UNIFORM HEALTH
12 CARE INFORMATION ACT, TITLE 50, CHAPTER 16, PART 5.

13 {a}--the subject of the test or the subject's legal
14 guardian;

15 {b}--a person who secures a written release of test
16 results executed by the subject of the test or the subject's
17 legal guardian;

18 {c}--a person to whom the subject of the test or the
19 subject's legal guardian has authorized disclosure in
20 writing;

21 {d}--a person whose notification is authorized under
22 subsection (2); except that only the test results may be
23 disclosed, not the identity of the subject of the test;

24 {e}--a minor's parent, custodian, or guardian pursuant
25 to 41-1-403;

1 {f}--the subject's spouse;

2 {g}--the department or the centers for disease control
3 of the United States public health service in accordance
4 with state and federal reporting requirements for a
5 diagnosed case of AIDS or another HIV-related condition; or

6 {h}--a health care facility or health care provider
7 that procures, processes, distributes, or uses;

8 {i}--a human body part from a deceased person pursuant
9 to Title 72, chapter 17, with respect to medical information
10 regarding that person; or

11 {ii}--semen for the purpose of artificial insemination.

12 (2) 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. If
16 the subject is unable or unwilling to notify all contacts,
17 the health care provider may ask the subject to disclose
18 voluntarily the identities of the contacts and to authorize
19 notification of those contacts by a health care provider.
20 The health care provider shall inform the subject that he is
21 under no legal obligation either to disclose names of
22 contacts or to authorize their notification. A notification
23 may state only that the contact may have been exposed to HIV
24 and may not include the time or place of possible exposure
25 or the identity of the subject of the test.

~~{3}--A--violation--of--this--section--is--a--misdemeanor
punishable-by-a-fine-of-up-to-\$50,000-or-imprisonment--in--a
county-jail-for-up-to-1-year,-or-both-~~

NEW SECTION. **Section 7. Civil remedy.** (1) A person aggrieved by a violation of [sections 1 through 7] has a right of action in the district court and may recover for each violation:

(a) against a person who negligently violates a provision of [sections 1 through 7], damages of \$1,000 or actual damages, whichever is greater;

(b) against a person who intentionally or recklessly violates a provision of [sections 1 through 7], damages of \$5,000 or actual damages, whichever is greater;

(c) reasonable attorney fees; and

(d) other appropriate relief, including injunctive relief.

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

(3) The ~~attorney-general~~ DEPARTMENT may maintain a civil action to enforce [sections 1 through 7] in which the court may order any relief permitted under subsection (1).

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

(5) Nothing in [sections 1 through 7] may be construed

to impose civil liability or criminal sanctions for disclosure of an HIV-related test result in accordance with any reporting requirement for a diagnosed case of AIDS or an HIV-related condition by the department or the centers for disease control of the United States public health service.

~~Section 8.--Section 50-16-529, MCA, is amended to read-~~

~~"50-16-529.--Disclosure-without-patient's-authorization
based-on-need-to-know: A Except-as-provided-in-[section-6],
a health-care-provider-may-disclose-health-care--information
about--a-patient-without-the-patient's-authorization,-to-the
extent-a-recipient-needs-to-know--the--information,-if--the
disclosure-is:~~

~~{1}--to--a--person--who-is-providing-health-care-to-the
patient;~~

~~{2}--to-any--other--person--who--requires--health--care
information--for-health-care-education,-to-provide-planning,
quality-assurance,-peer-review,-or--administrative,-legal,
financial,-or--actuarial--services--to--the--health--care
provider,-or-for-assisting-the-health-care-provider--in--the
delivery--of--health--care--and--if-the-health-care-provider
reasonably-believes-that-the-person-will:~~

~~{a}--not-use-or-disclose-the--health--care--information
for-any-other-purpose;-and~~

~~{b}--take--appropriate-steps-to-protect-the-health-care
information;~~

{3}--to--any--other--health--care--provider---who---has previously--provided--health--care--to--the--patient,--to--the extent--necessary--to--provide--health--care--to--the--patient, unless--the--patient--has--instructed--the--health--care--provider not--to--make--the--disclosure;

{4}--to--immediate--family--members--of--the--patient--or--any other--individual--with--whom--the--patient--is--known--to--have--a close--personal--relationship,--if--made--in--accordance--with--the laws--of--the--state--and--good--medical--or--other--professional practice,--unless--the--patient--has--instructed--the--health--care provider--not--to--make--the--disclosure;

{5}--to--a--health--care--provider--who--is--the--successor--in interest--to--the--health--care--provider--maintaining--the--health care--information;

{6}--for--use---in---a---research---project---that--an institutional--review--board--has--determined;

{a}--is--of--sufficient--importance--to--outweigh---the intrusion--into--the--privacy--of--the--patient--that--would--result from--the--disclosure;

{b}--is--impracticable--without--the--use--or--disclosure--of the--health--care--information--in--individually--identifiable form;

{c}--contains--reasonable--safeguards--to--protect--the information--from--improper--disclosure;

{d}--contains--reasonable--safeguards--to--protect--against

directly--or--indirectly--identifying--any--patient--in--any--report of--the--research--project;--and

{e}--contains--procedures--to--remove--or--destroy--at--the earliest--opportunity,--consistent--with--the--purposes--of--the project,--information--that--would--enable--the--patient--to--be identified,--unless--an--institutional--review--board--authorizes retention--of--identifying--information--for--purposes--of--another research--project;

{7}--to--a--person--who--obtains--information--for--purposes of--an--audit,--if--that--person--agrees--in--writing--to:

{a}--remove--or--destroy,--at--the--earliest--opportunity consistent--with--the--purpose--of--the--audit,--information--that would--enable--the--patient--to--be--identified;--and

{b}--not--disclose--the--information--further,--except--to accomplish--the--audit--or--to--report--unlawful--or--improper conduct--involving--fraud--in--payment--for--health--care--by--a health--care--provider--or--patient--or--other--unlawful--conduct--by a--health--care--provider;--and

{8}--to--an--official--of--a--penal--or--other--custodial institution--in--which--the--patient--is--detained."

Section 9.--Section 50-16-530, MCA, is amended to read:

"50-16-530.--Disclosure--without--patient's--authorization ---other--bases. A Except--as--provided--in--{section 6}, a health--care--provider--may--disclose--health--care--information about--a--patient--without--the--patient's--authorization--if--the

1 disclosure-is;

2 {1}--directory--information,--unless--the--patient--has

3 instructed--the--health--care--provider--not--to--make--the

4 disclosure;

5 {2}--to--federal,--state,--or--local--public--health

6 authorities,--to--the--extent--the--health--care-provider-is

7 required-by-law-to-report-health-care--information--or--when

8 needed-to-protect-the-public-health;

9 {3}--to--federal,--state,--or--local--law--enforcement

10 authorities-to-the-extent-required-by-law;

11 {4}--to-a-law-enforcement-officer--about--the--general

12 physical--condition--of--a-patient-being-treated-in-a-health

13 care-facility-if-the-patient-was-injured-on-a-public-roadway

14 or-was-injured-by-the-possible-criminal-act-of--another;--or

15 {5}--pursuant--to-compulsory-process-in-accordance-with

16 50-16-535-and-50-16-536;"

17 NEW SECTION. **Section 8.** Extension of authority. Any

18 existing authority to make rules on the subject of the

19 provisions of [this act] is extended to the provisions of

20 [this act].

-End-