

Molnar

House BILL NO. **558**

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INTRODUCED BY

Smith Bergman *Beinard* *ORR*
Simpkins *fore* *Artiss* *Adams* *Deaudry* *Wells* *Knox* *Seating* *Hargrave*

A BILL FOR AN ACT ENTITLED: "AN ACT DIRECTING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO TREAT HIV INFECTION IN THE SAME MANNER AS OTHER COMMUNICABLE AND SEXUALLY TRANSMITTED DISEASES; REMOVING THE WRITTEN INFORMED CONSENT REQUIREMENT FROM THE AIDS PREVENTION ACT; AND AMENDING SECTIONS 50-16-1003 AND 50-16-1007, MCA."

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

NEW SECTION. Section 1. AIDS, HIV-related conditions, and HIV infection to be treated as other communicable diseases. It is the intent of the legislature to treat AIDS, HIV-related conditions, and HIV infection in the same manner as other communicable and sexually transmitted diseases with regard to testing, reporting, partner notification, and disease intervention. The department shall adopt rules, as provided in 50-1-202, to reflect this policy.

Section 2. Section 50-16-1003, MCA, is amended to read:

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

- (1) "AIDS" means acquired immune deficiency syndrome as further defined by the department in accordance with standards promulgated by the centers for disease control of the United States public health service.
- (2) "Contact" means:
 - ~~(a) 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; or~~
 - ~~(b) any other~~ a person who has been exposed to the test subject in a manner, voluntary or involuntary, that may allow HIV transmission in accordance with modes of transmission recognized by the centers for disease control of the United States public health service.
- (3) "Department" means the department of public health and human services provided for in 2-15-2201.
- (4) "Health care facility" means a health care institution, private or public, including but not limited

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

2 (5) "Health care provider" means a person who is licensed, certified, or otherwise authorized by
3 the laws of this state to provide health care in the ordinary course of business or practice of a profession.
4 The term does not include a person who provides health care solely through the sale or dispensing of drugs
5 or medical devices.

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

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

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

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

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

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

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

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

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

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

26 (16) "Release of test results" means a written authorization for disclosure of HIV-related test results
27 that:

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

29 and

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

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

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

8 ~~(i) an explanation of the test, including its purpose, potential uses, limitations, and the meaning of~~
9 ~~its results;~~

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

13 ~~(iii) an explanation of whether and to whom the subject's name and test results may be disclosed;~~

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

15 ~~(v) the name and address of a health care provider whom the subject approves to receive the~~
16 ~~subject's test results and to provide the subject with posttest counseling; and~~

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

20 ~~(b) The department shall develop an agreement form that may be used for purposes of this~~
21 ~~subsection."~~

22
23 **Section 3.** Section 50-16-1007, MCA, is amended to read:

24 **"50-16-1007. Testing -- counseling -- informed consent -- penalty.** (1) An HIV-related test may
25 be ordered only by a health care provider and only after receiving the ~~written informed~~ consent of:

26 (a) the subject of the test;

27 (b) the subject's legal guardian;

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

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

30 (ii) there is no legal guardian;

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

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

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

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

6 (ii) the circumstances in subsections (1)(c)(i) through (1)(c)(iv) exist.

7 (2) When a health care provider orders an HIV-related test, the provider also certifies that informed
8 consent has been received prior to ordering an HIV-related test.

9 (3) Before the subject of the test ~~executes an informed consent agreement~~ gives consent, the
10 health care provider ordering the test or the provider's designee ~~must~~ shall give pretest counseling to:

11 (a) the subject;

12 (b) the subject's legal guardian;

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

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

15 (ii) there is no guardian; or

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

18 (i) the subject is in the hospital; and

19 (ii) the circumstances in subsections (1)(c)(i) and (1)(c)(ii) exist.

20 (4) A health care provider who does not provide HIV-related tests on an anonymous basis shall
21 inform each person who wishes to be tested that anonymous testing is available at one of the
22 counseling-testing sites established by the department, or elsewhere.

23 (5) The subject of an HIV-related test or any of the subject's representatives authorized by
24 subsection (1) to act in the subject's stead shall designate, as part of ~~a written informed~~ the consent, a
25 health care provider to receive the results of an HIV-related test. The designated health care provider shall
26 inform the subject or the subject's representative of the results in person.

27 (6) At the time that the subject of a test or the subject's representative is given the test results,
28 the health care provider or the provider's designee shall give the subject or the subject's representative
29 posttest counseling.

30 (7) If a test is performed as part of an application for insurance, the insurance company ~~must~~ shall

1 ensure that:

2 (a) negative results can be obtained by the subject or the subject's representative upon request;
3 and

4 (b) positive results are returned to the health care provider designated by the subject or the
5 subject's representative.

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

8 (9) Subsections (1) through (6) do not apply to:

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

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

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

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

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

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

19 (iv) none of the individuals listed in subsection (1)(b), (1)(c), or (1)(d) exists or is available within
20 a reasonable time after the test is determined to be advisable; or

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

23 (10) (a) If an agent or employee of a health care facility, a health care provider with privileges at
24 the health care facility, or a person providing emergency services who is described in 50-16-702 has been
25 voluntarily or involuntarily exposed to a patient in a manner that may allow infection by HIV by a mode of
26 transmission recognized by the centers for disease control of the United States public health service, the
27 physician of the patient shall, upon request of the exposed person, notify the patient of the exposure and
28 seek ~~written informed~~ consent in accordance with guidelines of the centers for disease control for an
29 HIV-related test of the patient. If ~~written informed~~ consent cannot be obtained, the health care facility, in
30 accordance with the infectious disease exposure guidelines of the health care facility, may, without the

1 consent of the patient, conduct the test on previously drawn blood or previously collected bodily fluids to
2 determine if the patient is in fact infected. A health care facility is not required to perform a test authorized
3 in this subsection. If a test is conducted pursuant to this subsection, the health care facility shall inform
4 the patient of the results and provide the patient with posttest counseling. The patient may not be charged
5 for a test performed pursuant to this subsection. The results of a test performed pursuant to this subsection
6 may not be made part of the patient's record and are subject to 50-16-1009(1).

7 (b) For the purposes of this subsection (10), ~~"written informed consent"~~ "consent" means an
8 agreement ~~in writing~~ that is freely executed, either orally or in writing, by the subject of an HIV-related test,
9 by the subject's legal guardian, or, if there is no legal guardian and the subject is incapacitated, by the
10 subject's next of kin, significant other, or a person designated by the subject in hospital records to act on
11 the subject's behalf.

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

14
15 NEW SECTION. Section 4. Codification instruction. [Section 1] is intended to be codified as an
16 integral part of Title 50, chapter 16, part 10, and the provisions of Title 50, chapter 16, part 10, apply to
17 [section 1].

18 -END-

Molnar

House BILL NO. 558

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INTRODUCED BY *Smith Bergman* *Beinard* *ORR*
Simkins *for* *Parsons* *Adams* *Deaudry* *Wells* *W. Cox* *Leatberg*
Hargrove

A BILL FOR AN ACT ENTITLED: "AN ACT DIRECTING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO TREAT HIV INFECTION IN THE SAME MANNER AS OTHER COMMUNICABLE AND SEXUALLY TRANSMITTED DISEASES; REMOVING THE WRITTEN INFORMED CONSENT REQUIREMENT FROM THE AIDS PREVENTION ACT; AND AMENDING SECTIONS 50-16-1003 AND 50-16-1007, MCA."

Werner *Arnott* *Ahner* *Walter* *Hayne* *Holland* *Spald*
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. AIDS, HIV-related conditions, and HIV infection to be treated as other communicable diseases. It is the intent of the legislature to treat AIDS, HIV-related conditions, and HIV infection in the same manner as other communicable and sexually transmitted diseases with regard to testing, reporting, partner notification, and disease intervention. The department shall adopt rules, as provided in 50-1-202, to reflect this policy.

Section 2. Section 50-16-1003, MCA, is amended to read:

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

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

(2) "Contact" means:

~~(a) 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; or~~

~~(b) any other~~ a person who has been exposed to the test subject in a manner, voluntary or involuntary, that may allow HIV transmission in accordance with modes of transmission recognized by the centers for disease control of the United States public health service.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

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

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

2 (5) "Health care provider" means a person who is licensed, certified, or otherwise authorized by
3 the laws of this state to provide health care in the ordinary course of business or practice of a profession.
4 The term does not include a person who provides health care solely through the sale or dispensing of drugs
5 or medical devices.

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

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

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

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

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

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

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

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

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

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

26 (16) "Release of test results" means a written authorization for disclosure of HIV-related test results
27 that:

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

29 and

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

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

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

8 ~~(i) an explanation of the test, including its purpose, potential uses, limitations, and the meaning of~~
9 ~~its results;~~

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

13 ~~(iii) an explanation of whether and to whom the subject's name and test results may be disclosed;~~

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

15 ~~(v) the name and address of a health care provider whom the subject approves to receive the~~
16 ~~subject's test results and to provide the subject with posttest counseling; and~~

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

20 ~~(b) The department shall develop an agreement form that may be used for purposes of this~~
21 ~~subsection."~~

22
23 **Section 3.** Section 50-16-1007, MCA, is amended to read:

24 **"50-16-1007. Testing -- counseling -- informed consent -- penalty.** (1) An HIV-related test may
25 be ordered only by a health care provider and only after receiving the ~~written informed~~ consent of:

26 (a) the subject of the test;

27 (b) the subject's legal guardian;

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

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

30 (ii) there is no legal guardian;

- 1 (iii) there are medical indications of an HIV-related condition; and
- 2 (iv) the test is advisable in order to determine the proper course of treatment of the subject; or
- 3 (d) the subject's next of kin or significant other or the person, if any, designated by the subject
- 4 in hospital records to act on the subject's behalf if:
- 5 (i) the subject is in a hospital; and
- 6 (ii) the circumstances in subsections (1)(c)(i) through (1)(c)(iv) exist.
- 7 (2) When a health care provider orders an HIV-related test, the provider also certifies that informed
- 8 consent has been received prior to ordering an HIV-related test.
- 9 (3) Before the subject of the test ~~executes an informed consent agreement~~ gives consent, the
- 10 health care provider ordering the test or the provider's designee ~~must~~ shall give pretest counseling to:
- 11 (a) the subject;
- 12 (b) the subject's legal guardian;
- 13 (c) the subject's next of kin or significant other if:
- 14 (i) the subject is unconscious or otherwise mentally incapacitated; and
- 15 (ii) there is no guardian; or
- 16 (d) the subject's next of kin or significant other or the person, if any, designated by the subject
- 17 in hospital records to act on the subject's behalf if:
- 18 (i) the subject is in the hospital; and
- 19 (ii) the circumstances in subsections (1)(c)(i) and (1)(c)(ii) exist.
- 20 (4) A health care provider who does not provide HIV-related tests on an anonymous basis shall
- 21 inform each person who wishes to be tested that anonymous testing is available at one of the
- 22 counseling-testing sites established by the department, or elsewhere.
- 23 (5) The subject of an HIV-related test or any of the subject's representatives authorized by
- 24 subsection (1) to act in the subject's stead shall designate, as part of ~~a written informed~~ the consent, a
- 25 health care provider to receive the results of an HIV-related test. The designated health care provider shall
- 26 inform the subject or the subject's representative of the results in person.
- 27 (6) At the time that the subject of a test or the subject's representative is given the test results,
- 28 the health care provider or the provider's designee shall give the subject or the subject's representative
- 29 posttest counseling.
- 30 (7) If a test is performed as part of an application for insurance, the insurance company ~~must~~ shall

1 ensure that:

2 (a) negative results can be obtained by the subject or the subject’s representative upon request;
3 and

4 (b) positive results are returned to the health care provider designated by the subject or the
5 subject’s representative.

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

8 (9) Subsections (1) through (6) do not apply to:

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

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

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

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

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

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

19 (iv) none of the individuals listed in subsection (1)(b), (1)(c), or (1)(d) exists or is available within
20 a reasonable time after the test is determined to be advisable; or

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

23 (10) (a) If an agent or employee of a health care facility, a health care provider with privileges at
24 the health care facility, or a person providing emergency services who is described in 50-16-702 has been
25 voluntarily or involuntarily exposed to a patient in a manner that may allow infection by HIV by a mode of
26 transmission recognized by the centers for disease control of the United States public health service, the
27 physician of the patient shall, upon request of the exposed person, notify the patient of the exposure and
28 seek ~~written informed~~ consent in accordance with guidelines of the centers for disease control for an
29 HIV-related test of the patient. If ~~written informed~~ consent cannot be obtained, the health care facility, in
30 accordance with the infectious disease exposure guidelines of the health care facility, may, without the

1 consent of the patient, conduct the test on previously drawn blood or previously collected bodily fluids to
2 determine if the patient is in fact infected. A health care facility is not required to perform a test authorized
3 in this subsection. If a test is conducted pursuant to this subsection, the health care facility shall inform
4 the patient of the results and provide the patient with posttest counseling. The patient may not be charged
5 for a test performed pursuant to this subsection. The results of a test performed pursuant to this subsection
6 may not be made part of the patient's record and are subject to 50-16-1009(1).

7 (b) For the purposes of this subsection (10), "~~written informed consent~~" "consent" means an
8 agreement ~~in writing~~ that is freely executed, either orally or in writing, by the subject of an HIV-related test,
9 by the subject's legal guardian, or, if there is no legal guardian and the subject is incapacitated, by the
10 subject's next of kin, significant other, or a person designated by the subject in hospital records to act on
11 the subject's behalf.

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

14
15 **NEW SECTION. Section 4. Codification instruction.** [Section 1] is intended to be codified as an
16 integral part of Title 50, chapter 16, part 10, and the provisions of Title 50, chapter 16, part 10, apply to
17 [section 1].

18 -END-

Moloney

House BILL NO. 558

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INTRODUCED BY ~~Smith Bergman~~ *Bisnard* *OKR*
~~Simpkins~~ *for* *Adams* *Deaudry* *Wells* *Fox* *Leutony*
Hughes

A BILL FOR AN ACT ENTITLED: "AN ACT DIRECTING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO TREAT HIV INFECTION IN THE SAME MANNER AS OTHER COMMUNICABLE AND SEXUALLY TRANSMITTED DISEASES; REMOVING THE WRITTEN INFORMED CONSENT REQUIREMENT FROM THE AIDS PREVENTION ACT; AND AMENDING SECTIONS 50-16-1003 AND 50-16-1007, MCA."

Walters *Hayne* *Holland* *Shank*

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

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.

HOUSE BILL NO. 558

INTRODUCED BY SMITH, BERGMAN, BRAINARD, ORR, MOLNAR, SIMPKINS, JORE, CURTISS, ADAMS, BEAUDRY, WELLS, KNOX, KEATING, HARGROVE, KEENAN, ARNOTT, AHNER, WALTERS, HAYNE, HOLLAND, ESTRADA

A BILL FOR AN ACT ENTITLED: "AN ACT DIRECTING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO TREAT HIV INFECTION IN THE SAME MANNER AS OTHER COMMUNICABLE AND DISEASES, INCLUDING SEXUALLY TRANSMITTED DISEASES; REMOVING THE WRITTEN INFORMED CONSENT REQUIREMENT FROM THE AIDS PREVENTION ACT THAT INFORMED CONSENT BE IN WRITING; DEFINING "INFORMED CONSENT"; AND AMENDING SECTIONS 50-16-1003 AND 50-16-1007, MCA."

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

NEW SECTION. Section 1. AIDS, HIV-related conditions, and HIV infection to be treated as other communicable diseases. It is the intent of the legislature to treat AIDS, HIV-related conditions, and HIV infection in the same manner as other communicable and DISEASES, INCLUDING sexually transmitted diseases, BY ADOPTING THE MOST CURRENTLY ACCEPTED PUBLIC HEALTH PRACTICES with regard to testing, reporting, partner notification, and disease intervention. NOTHING IN THIS SECTION IS INTENDED TO PROHIBIT THE DEPARTMENT FROM ALLOWING TESTING FOR HIV INFECTION TO BE PERFORMED AND REPORTED WITHOUT IDENTIFICATION OF THE SUBJECT OF THE TEST. The department shall adopt rules, as provided in 50-1-202, to reflect this policy.

Section 2. Section 50-16-1003, MCA, is amended to read:

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

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

(2) "Contact" means:

(a) ~~an individual identified by the subject of an HIV related test as a past or present sexual partner~~

1 ~~or as a person with whom the subject has shared hypodermic needles or syringes; or~~

2 ~~(b) any other~~ a person who has been exposed to the test subject in a manner, voluntary or
3 involuntary, that may allow HIV transmission in accordance with modes of transmission recognized by the
4 centers for disease control of the United States public health service.

5 (3) "Department" means the department of public health and human services provided for in
6 2-15-2201.

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

9 (5) "Health care provider" means a person who is licensed, certified, or otherwise authorized by
10 the laws of this state to provide health care in the ordinary course of business or practice of a profession.
11 The term does not include a person who provides health care solely through the sale or dispensing of drugs
12 or medical devices.

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

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

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

21 (9) "INFORMED CONSENT" MEANS A FREELY EXECUTED ORAL OR WRITTEN GRANT OF
22 PERMISSION BY THE SUBJECT OF AN HIV-RELATED TEST, BY THE SUBJECT'S LEGAL GUARDIAN, OR,
23 IF THERE IS NO LEGAL GUARDIAN AND THE SUBJECT OF THE TEST IS UNCONSCIOUS OR OTHERWISE
24 MENTALLY INCAPACITATED, BY THE SUBJECT'S NEXT OF KIN OR SIGNIFICANT OTHER OR A PERSON
25 DESIGNATED BY THE SUBJECT IN HOSPITAL RECORDS TO ACT ON THE PERSON'S BEHALF TO
26 PERFORM AN HIV-RELATED TEST AFTER THE RECEIPT OF PRETEST COUNSELING.

27 ~~(9)~~(10) "Legal guardian" means a person appointed by a court to assume legal authority for another
28 who has been found incapacitated or, in the case of a minor, a person who has legal custody of the minor.

29 ~~(10)~~(11) "Local board" means a county, city, city-county, or district board of health.

30 ~~(11)~~(12) "Local health officer" means a county, city, city-county, or district health officer appointed

1 by the local board.

2 ~~(12)~~(13) "Next of kin" means an individual who is a parent, adult child, grandparent, adult sibling,
3 or legal spouse of a person.

4 ~~(13)~~(14) "Person" means an individual, corporation, organization, or other legal entity.

5 ~~(14)~~(15) "Posttest counseling" means counseling, conducted at the time that the HIV-related test
6 results are given, and includes, at a minimum, written materials provided by the department.

7 ~~(15)~~(16) "Pretest counseling" means the provision of counseling to the subject prior to conduct of
8 an HIV-related test, including, at a minimum, written materials developed and provided by the department.

9 ~~(16)~~(17) "Release of test results" means a written authorization for disclosure of HIV-related test
10 results that:

11 (a) is signed and dated by the person tested or the person authorized to act for the person tested;
12 and

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

14 ~~(17)~~(18) "Significant other" means an individual living in a current spousal relationship with another
15 individual but who is not legally a spouse of that individual.

16 ~~(18) (a) "Written informed consent" means an agreement in writing that is freely executed by the
17 subject of an HIV related test, by the subject's legal guardian, or, if there is no legal guardian and the
18 subject is unconscious or otherwise mentally incapacitated, by the subject's next of kin or significant other
19 or a person designated by the subject in hospital records to act on the subject's behalf. The written
20 informed consent must include at least the following:~~

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

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

26 ~~(iii) an explanation of whether and to whom the subject's name and test results may be disclosed;~~

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

28 ~~(v) the name and address of a health care provider whom the subject approves to receive the
29 subject's test results and to provide the subject with posttest counseling; and~~

30 ~~(vi) if the consent is for a test being performed as part of an application for insurance, a statement~~

1 ~~that only a positive test result will be reported to the designated health care provider and that negative test~~
 2 ~~results may be obtained by the subject from the insurance company.~~

3 ~~(b) The department shall develop an agreement form that may be used for purposes of this~~
 4 ~~subsection."~~

5
 6 **Section 3.** Section 50-16-1007, MCA, is amended to read:

7 **"50-16-1007. Testing -- counseling -- ~~informed~~ INFORMED consent -- penalty.** (1) An HIV-related
 8 test may be ordered only by a health care provider and only after receiving the ~~written informed~~ INFORMED
 9 consent of:

10 (a) the subject of the test;

11 (b) the subject's legal guardian;

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

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

14 (ii) there is no legal guardian;

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

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

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

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

20 (ii) the circumstances in subsections (1)(c)(i) through (1)(c)(iv) exist.

21 (2) When a health care provider orders an HIV-related test, the provider also certifies that informed
 22 consent has been received prior to ordering an HIV-related test.

23 (3) Before the subject of the test ~~executes an informed consent agreement~~ gives INFORMED
 24 consent, the health care provider ordering the test or the provider's designee ~~must~~ shall give pretest
 25 counseling to:

26 (a) the subject;

27 (b) the subject's legal guardian;

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

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

30 (ii) there is no guardian; or

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

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

4 (ii) the circumstances in subsections (1)(c)(i) and (1)(c)(ii) exist.

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

8 (5) The subject of an HIV-related test or any of the subject's representatives authorized by
9 subsection (1) to act in the subject's stead shall designate, ~~as part of a written informed~~ AFTER GIVING
10 INFORMED consent, a health care provider to receive the results of an HIV-related test. The designated
11 health care provider shall inform the subject or the subject's representative of the results in person.

12 (6) At the time that the subject of a test or the subject's representative is given the test results,
13 the health care provider or the provider's designee shall give the subject or the subject's representative
14 posttest counseling.

15 (7) If a test is performed as part of an application for insurance, the insurance company ~~must~~ shall
16 ensure that:

17 (a) negative results can be obtained by the subject or the subject's representative upon request;

18 and

19 (b) positive results are returned to the health care provider designated by the subject or the
20 subject's representative.

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

23 (9) Subsections (1) through (6) do not apply to:

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

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

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

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

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

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

4 (iv) none of the individuals listed in subsection (1)(b), (1)(c), or (1)(d) exists or is available within
5 a reasonable time after the test is determined to be advisable; or

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

8 (10) (a) If an agent or employee of a health care facility, a health care provider with privileges at
9 the health care facility, or a person providing emergency services who is described in 50-16-702 has been
10 voluntarily or involuntarily exposed to a patient in a manner that may allow infection by HIV by a mode of
11 transmission recognized by the centers for disease control of the United States public health service, the
12 physician of the patient shall, upon request of the exposed person, notify the patient of the exposure and
13 seek ~~written informed~~ INFORMED consent in accordance with guidelines of the centers for disease control
14 for an HIV-related test of the patient. If ~~written informed~~ INFORMED consent cannot be obtained, the health
15 care facility, in accordance with the infectious disease exposure guidelines of the health care facility, may,
16 without the consent of the patient, conduct the test on previously drawn blood or previously collected
17 bodily fluids to determine if the patient is in fact infected. A health care facility is not required to perform
18 a test authorized in this subsection. If a test is conducted pursuant to this subsection, the health care
19 facility shall inform the patient of the results and provide the patient with posttest counseling. The patient
20 may not be charged for a test performed pursuant to this subsection. The results of a test performed
21 pursuant to this subsection may not be made part of the patient's record and are subject to 50-16-1009(1).

22 (b) For the purposes of this subsection (10), ~~"written informed consent"~~ ~~"consent"~~ "INFORMED
23 CONSENT" means an agreement ~~in writing~~ that is freely executed, either orally or in writing, by the subject
24 of an HIV-related test, by the subject's legal guardian, or, if there is no legal guardian and the subject is
25 incapacitated, by the subject's next of kin, significant other, or a person designated by the subject in
26 hospital records to act on the subject's behalf.

27 (11) A knowing or purposeful violation of this section is a misdemeanor punishable by a fine of
28 \$1,000 or imprisonment for up to 6 months, or both."

29
30 NEW SECTION. Section 4. Codification instruction. [Section 1] is intended to be codified as an

1 integral part of Title 50, chapter 16, part 10, and the provisions of Title 50, chapter 16, part 10, apply to
2 [section 1].

3 -END-

1 HOUSE BILL NO. 558

2 INTRODUCED BY SMITH, BERGMAN, BRAINARD, ORR, MOLNAR, SIMPKINS, JORE, CURTISS,
 3 ADAMS, BEAUDRY, WELLS, KNOX, KEATING, HARGROVE, KEENAN, ARNOTT, AHNER, WALTERS,
 4 HAYNE, HOLLAND, ESTRADA

5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT DIRECTING THE DEPARTMENT OF PUBLIC HEALTH AND
 7 HUMAN SERVICES TO TREAT HIV INFECTION IN THE SAME MANNER AS OTHER COMMUNICABLE AND
 8 DISEASES, INCLUDING SEXUALLY TRANSMITTED DISEASES; REMOVING THE WRITTEN INFORMED
 9 CONSENT REQUIREMENT FROM THE AIDS PREVENTION ACT THAT INFORMED CONSENT BE IN
 10 WRITING; DEFINING "INFORMED CONSENT"; AND AMENDING SECTIONS 50-16-1003 AND 50-16-1007,
 11 MCA."

12
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14
 15 NEW SECTION. Section 1. AIDS, HIV-related conditions, and HIV infection to be treated as other
 16 communicable diseases. It is the intent of the legislature to treat AIDS, HIV-related conditions, and HIV
 17 infection in the same manner as other communicable ~~and~~ DISEASES, INCLUDING sexually transmitted
 18 diseases, BY ADOPTING THE MOST CURRENTLY ACCEPTED PUBLIC HEALTH PRACTICES with regard to
 19 testing, reporting, partner notification, and disease intervention. NOTHING IN THIS SECTION IS INTENDED
 20 TO PROHIBIT THE DEPARTMENT FROM ALLOWING TESTING FOR HIV INFECTION TO BE PERFORMED
 21 AND REPORTED WITHOUT IDENTIFICATION OF THE SUBJECT OF THE TEST. The department shall adopt
 22 rules, as provided in 50-1-202, to reflect this policy.

23
 24 **Section 2.** Section 50-16-1003, MCA, is amended to read:

25 **"50-16-1003. Definitions.** As used in this part, the following definitions apply:

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

29 (2) "Contact" means:

30 ~~(a) an individual identified by the subject of an HIV-related test as a past or present sexual partner~~

1 ~~or as a person with whom the subject has shared hypodermic needles or syringes; or~~

2 ~~(b) any other~~ a person who has been exposed to the test subject in a manner, voluntary or
3 involuntary, that may allow HIV transmission in accordance with modes of transmission recognized by the
4 centers for disease control of the United States public health service.

5 (3) "Department" means the department of public health and human services provided for in
6 2-15-2201.

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

9 (5) "Health care provider" means a person who is licensed, certified, or otherwise authorized by
10 the laws of this state to provide health care in the ordinary course of business or practice of a profession.
11 The term does not include a person who provides health care solely through the sale or dispensing of drugs
12 or medical devices.

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

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

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

21 (9) "INFORMED CONSENT" MEANS A FREELY EXECUTED ORAL OR WRITTEN GRANT OF
22 PERMISSION BY THE SUBJECT OF AN HIV-RELATED TEST, BY THE SUBJECT'S LEGAL GUARDIAN, OR,
23 IF THERE IS NO LEGAL GUARDIAN AND THE SUBJECT OF THE TEST IS UNCONSCIOUS OR OTHERWISE
24 MENTALLY INCAPACITATED, BY THE SUBJECT'S NEXT OF KIN OR SIGNIFICANT OTHER OR A PERSON
25 DESIGNATED BY THE SUBJECT IN HOSPITAL RECORDS TO ACT ON THE PERSON'S BEHALF TO
26 PERFORM AN HIV-RELATED TEST AFTER THE RECEIPT OF PRETEST COUNSELING.

27 ~~(9)(10)~~ "Legal guardian" means a person appointed by a court to assume legal authority for another
28 who has been found incapacitated or, in the case of a minor, a person who has legal custody of the minor.

29 ~~(10)(11)~~ "Local board" means a county, city, city-county, or district board of health.

30 ~~(11)(12)~~ "Local health officer" means a county, city, city-county, or district health officer appointed

1 by the local board.

2 ~~(12)~~(13) "Next of kin" means an individual who is a parent, adult child, grandparent, adult sibling,
3 or legal spouse of a person.

4 ~~(13)~~(14) "Person" means an individual, corporation, organization, or other legal entity.

5 ~~(14)~~(15) "Posttest counseling" means counseling, conducted at the time that the HIV-related test
6 results are given, and includes, at a minimum, written materials provided by the department.

7 ~~(15)~~(16) "Pretest counseling" means the provision of counseling to the subject prior to conduct of
8 an HIV-related test, including, at a minimum, written materials developed and provided by the department.

9 ~~(16)~~(17) "Release of test results" means a written authorization for disclosure of HIV-related test
10 results that:

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

12 and

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

14 ~~(17)~~(18) "Significant other" means an individual living in a current spousal relationship with another
15 individual but who is not legally a spouse of that individual.

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

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

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

26 ~~(iii) an explanation of whether and to whom the subject's name and test results may be disclosed;~~

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

28 ~~(v) the name and address of a health care provider whom the subject approves to receive the~~
29 ~~subject's test results and to provide the subject with posttest counseling; and~~

30 ~~(vi) if the consent is for a test being performed as part of an application for insurance, a statement~~

1 ~~that only a positive test result will be reported to the designated health care provider and that negative test~~
 2 ~~results may be obtained by the subject from the insurance company.~~

3 ~~(b) The department shall develop an agreement form that may be used for purposes of this~~
 4 ~~subsection."~~

5

6 **Section 3.** Section 50-16-1007, MCA, is amended to read:

7 "**50-16-1007. Testing -- counseling -- ~~informed~~ INFORMED consent -- penalty.** (1) An HIV-related
 8 test may be ordered only by a health care provider and only after receiving the ~~written informed~~ INFORMED
 9 consent of:

- 10 (a) the subject of the test;
- 11 (b) the subject's legal guardian;
- 12 (c) the subject's next of kin or significant other if:
- 13 (i) the subject is unconscious or otherwise mentally incapacitated;
- 14 (ii) there is no legal guardian;
- 15 (iii) there are medical indications of an HIV-related condition; and
- 16 (iv) the test is advisable in order to determine the proper course of treatment of the subject; or
- 17 (d) the subject's next of kin or significant other or the person, if any, designated by the subject
 18 in hospital records to act on the subject's behalf if:
- 19 (i) the subject is in a hospital; and
- 20 (ii) the circumstances in subsections (1)(c)(i) through (1)(c)(iv) exist.

21 (2) When a health care provider orders an HIV-related test, the provider also certifies that informed
 22 consent has been received prior to ordering an HIV-related test.

23 (3) Before the subject of the test ~~executes an informed consent agreement~~ gives INFORMED
 24 consent, the health care provider ordering the test or the provider's designee ~~must~~ shall give pretest
 25 counseling to:

- 26 (a) the subject;
- 27 (b) the subject's legal guardian;
- 28 (c) the subject's next of kin or significant other if:
- 29 (i) the subject is unconscious or otherwise mentally incapacitated; and
- 30 (ii) there is no guardian; or

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

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

4 (ii) the circumstances in subsections (1)(c)(i) and (1)(c)(ii) exist.

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

8 (5) The subject of an HIV-related test or any of the subject's representatives authorized by
9 subsection (1) to act in the subject's stead shall designate, ~~as part of a written informed~~ AFTER GIVING
10 INFORMED consent, a health care provider to receive the results of an HIV-related test. The designated
11 health care provider shall inform the subject or the subject's representative of the results in person.

12 (6) At the time that the subject of a test or the subject's representative is given the test results,
13 the health care provider or the provider's designee shall give the subject or the subject's representative
14 posttest counseling.

15 (7) If a test is performed as part of an application for insurance, the insurance company ~~must~~ shall
16 OBTAIN THE INFORMED CONSENT IN WRITING AND ensure that:

17 (a) negative results can be obtained by the subject or the subject's representative upon request;
18 and

19 (b) positive results are returned to the health care provider designated by the subject or the
20 subject's representative.

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

23 (9) Subsections (1) through (6) do not apply to:

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

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

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

- 1 (i) the subject of the test is unconscious or otherwise mentally incapacitated;
 2 (ii) there are medical indications of an HIV-related condition;
 3 (iii) the test is advisable in order to determine the proper course of treatment of the subject; and
 4 (iv) none of the individuals listed in subsection (1)(b), (1)(c), or (1)(d) exists or is available within
 5 a reasonable time after the test is determined to be advisable; or

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

8 (10) (a) If an agent or employee of a health care facility, a health care provider with privileges at
 9 the health care facility, or a person providing emergency services who is described in 50-16-702 has been
 10 voluntarily or involuntarily exposed to a patient in a manner that may allow infection by HIV by a mode of
 11 transmission recognized by the centers for disease control of the United States public health service, the
 12 physician of the patient shall, upon request of the exposed person, notify the patient of the exposure and
 13 seek ~~written informed~~ INFORMED consent in accordance with guidelines of the centers for disease control
 14 for an HIV-related test of the patient. If ~~written informed~~ INFORMED consent cannot be obtained, the health
 15 care facility, in accordance with the infectious disease exposure guidelines of the health care facility, may,
 16 without the consent of the patient, conduct the test on previously drawn blood or previously collected
 17 bodily fluids to determine if the patient is in fact infected. A health care facility is not required to perform
 18 a test authorized in this subsection. If a test is conducted pursuant to this subsection, the health care
 19 facility shall inform the patient of the results and provide the patient with posttest counseling. The patient
 20 may not be charged for a test performed pursuant to this subsection. The results of a test performed
 21 pursuant to this subsection may not be made part of the patient's record and are subject to 50-16-1009(1).

22 (b) For the purposes of this subsection (10), "~~written informed consent~~" "~~consent~~" "INFORMED
 23 CONSENT" means an agreement ~~in writing~~ that is freely executed, either orally or in writing, by the subject
 24 of an HIV-related test, by the subject's legal guardian, or, if there is no legal guardian and the subject is
 25 incapacitated, by the subject's next of kin, significant other, or a person designated by the subject in
 26 hospital records to act on the subject's behalf.

27 (11) A knowing or purposeful violation of this section is a misdemeanor punishable by a fine of
 28 \$1,000 or imprisonment for up to 6 months, or both."

29

30 NEW SECTION. **Section 4. Codification instruction.** [Section 1] is intended to be codified as an

1 integral part of Title 50, chapter 16, part 10, and the provisions of Title 50, chapter 16, part 10, apply to
2 [section 1].

3 -END-