

MAINE STATE LEGISLATURE

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1 (EMERGENCY)
2 SECOND REGULAR SESSION
3

4 ONE HUNDRED AND TWELFTH LEGISLATURE
5

6 Legislative Document

No. 2063

8 S.P. 818

In Senate, February 24, 1986

9 Approved for introduction by a majority of the Legislative Council
10 pursuant to Joint Rule 26.

11 Reference to the Committee on Human Resources suggested and ordered
printed.

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Gill of Cumberland.

12 Cosponsored by Representative Connolly of Portland, Senator Clark of
Cumberland and Representative Rydell of Brunswick.

13 STATE OF MAINE
14

15 IN THE YEAR OF OUR LORD
16 NINETEEN HUNDRED AND EIGHTY-SIX
17

18 AN ACT to Protect the Public Health in
19 Relation to Acquired Immune Deficiency
20 Syndrome.
21

22 **Emergency preamble.** Whereas, Acts of the Legis-
23 lature do not become effective until 90 days after
24 adjournment unless enacted as emergencies; and

25 Whereas, the Legislature finds that Acquired Im-
26 mune Deficiency Syndrome is a serious and growing
27 viral epidemic in the United States; and

28 Whereas, the Legislature further finds that AIDS
29 Related Complex and other medical conditions which a
30 person contracts as a result of the probable
31 causative agent of AIDS is a serious and growing med-
32 ical problem in the United States; and

33 Whereas, the Legislature finds and declares that
34 it is imperative to protect the individuals who have
35 or are suspected of having AIDS, ARC or other related
36 medical conditions; and

1 Whereas, the Department of Human Services has
2 primary responsibility for coordinating the State's
3 policies with respect to AIDS; and

4 Whereas, the Legislature finds it imperative to
5 facilitate an exchange of information between the
6 citizens of Maine and the Department of Human Ser-
7 vices in order to effectively coordinate the State's
8 policies with respect to AIDS; and

9 Whereas, a test or tests are available to indi-
10 cate exposure to the probable causative agent of
11 AIDS; and

12 Whereas, the incidence of AIDS caused by the ex-
13 change of bodily fluids is a serious and a growing
14 problem; and

15 Whereas, it is imperative that donations of blood
16 be tested for the presence of the antibodies to the
17 causative agent of AIDS to safeguard against the pos-
18 sibility of transmitting the disease by transfusion;
19 and

20 Whereas, the Legislature finds and declares it is
21 a desired goal to discourage individuals in high-risk
22 groups, as defined by the Bureau of Health, who may
23 be exposed to AIDS from donating blood or exchanging
24 bodily fluids in order to safeguard against transmit-
25 ting the disease; and

26 Whereas, the Legislature finds and declares a
27 need to protect the privacy of the individuals who
28 are the subject of blood testing for antibodies to
29 the causative agents of AIDS; and

30 Whereas, in the judgment of the Legislature,
31 these facts create an emergency within the meaning of
32 the Constitution of Maine and require the following
33 legislation as immediately necessary for the preser-
34 vation of the public peace, health and safety; now,
35 therefore,

36 Be it enacted by the People of the State of Maine as
37 follows:

1 Sec. 1. 5 MRSA §12004, sub-§10, ¶A, sub-¶(37-A)
2 is enacted to read:

3 (37-A) Human Services Committee to Expenses 5 MRSA
4 Advise the Only
5 Department of \$17005
6 Human Services
7 on AIDS

8 Sec. 2. 5 MRSA Pt. 20 is enacted to read:

9 PART 20

10 DISCRIMINATORY PRACTICES

11 CHAPTER 501

12 MEDICAL CONDITIONS

13 §17001. Definitions

14 As used in this chapter, unless the context indi-
15 cates otherwise, the following terms have the follow-
16 ing meanings.

17 1. Antibody to HTLV-III. "Antibody to HTLV-III"
18 means the protective agents produced by the body's
19 immune system in response to the HTLV-III virus.

20 2. Antigen to HTLV-III. "Antigen to HTLV-III"
21 means the infectious agent that causes AIDS.

22 3. Business establishment. "Business establish-
23 ment" means any entity, however organized, which pro-
24 vides goods, services or accommodations to the gener-
25 al public.

26 4. Discrimination. "Discrimination" means any
27 act, policy or practice which, regardless of intent,
28 has the effect of subjecting anyone to different
29 treatment as a result of that person's medical condi-
30 tion. "Different treatment" includes any limitation
31 on a person's full, unsegregated and equal access to
32 or enjoyment of employment, real estate transactions,
33 business establishments and municipal services.

1 5. Health care provider. "Health care provider"
2 means any appropriately licensed, certified or regis-
3 tered provider of mental or physical health care, ei-
4 ther in the public or private sector or any business
5 establishment providing health care services.

6 6. HTLV-III. "HTLV-III" means the human T-cell
7 lymphotropic virus-type III that causes acquired
8 immunodeficiency syndrome.

9 7. HTLV-III infection. "HTLV-III infection"
10 means the pathological state produced by a human body
11 in response to the presence of HTLV-III.

12 8. Medical condition. "Medical condition" means
13 Acquired Immune Deficiency Syndrome or AIDS, AIDS Re-
14 lated Complex or ARC, any other medical condition
15 which a person contracts as a result of having AIDS
16 or ARC viral positivity or seropositivity. It covers
17 anyone who has such a medical condition or anyone who
18 is assumed or suspected of having such a condition.

19 9. Person or anyone. "Person or anyone" means
20 any natural person, firm, corporation, partnership or
21 other organization, association or group, however or-
22 ganized.

23 10. Real estate transaction. "Real estate trans-
24 action" includes the sale, repair improvement, lease,
25 rental or occupancy of any interest in real property.

26 11. Seropositivity. "Seropositivity" means a
27 positive test for the antibody to the HTLV-III virus.

28 12. Validated test results. "Validated test re-
29 sults" means a result of a test for the presence of
30 an antibody to HTLV-III, a test that measures the vi-
31 rus or a test that measures the immune system that
32 meets the validation requirements determined to be
33 necessary by the state epidemiologist.

34 13. Viral positivity. "Viral positivity" means
35 demonstrated presence of line HTLV-III antigen.

36 §17002. Unlawful practices

1 1. Prohibition. It is unlawful for anyone to do
2 anything which has the effect of discriminating
3 against anyone as a result of a person's medical con-
4 dition or the medical condition of a family or house-
5 hold member in:

6 A. Any aspect of employment, including, but not
7 limited to, opportunities for employment, termi-
8 nation from employment and conditioning employ-
9 ment upon a test for the presence of an antibody
10 to HTLV-III or any test to measure the immune
11 system or test to measure the HTLV-III virus;

12 B. Any real estate sales or rental transactions;

13 C. The availability of goods or services from
14 any business establishment; or

15 D. The use or availability of any service or fa-
16 cility wholly or partially funded or otherwise
17 supported by the State or any municipality.

18 2. Exceptions. It is not discrimination to se-
19 lect or reject persons for employment based on a bona
20 fide occupational qualification.

21 A. It is a bona fide occupational qualification
22 for an individual to be able to perform duties
23 without endangering that person's health or safe-
24 ty or the health or safety of others.

25 B. An employer who claims that a medical condi-
26 tion is a bona fide occupational qualification in
27 a particular case has the burden of proving the
28 claim.

29 3. Advertising. It is unlawful for any person to
30 make, publish or disseminate any notice or statement
31 which indicates that a person is doing or will do
32 anything which this law prohibits.

33 4. Association. It is unlawful for any person to
34 discriminate against anyone in any way because a per-
35 son is associated with another person who has a medi-
36 cal condition covered by this chapter.

1 5. Retaliation. It is unlawful for any person to
2 discriminate or retaliate against any person because
3 a person:

4 A. Has opposed an act or practice made unlawful
5 by this chapter;

6 B. Has supported this chapter and its enforce-
7 ment;

8 C. Has filed a complaint under this chapter; or

9 D. Has testified, assisted or participated in
10 any way in an investigation or proceeding under
11 this chapter.

12 6. Testing. No person may require another person
13 to take any test or undergo any medical procedure de-
14 signed to show or help show that a person has a medi-
15 cal condition covered by this chapter. This subsection
16 does not apply to an employer who can show that
17 the absence of a medical condition is a bona fide oc-
18 cupational qualification.

19 §17003. Civil enforcement

20 The District Court and Superior Court have con-
21 current jurisdiction to enforce the provisions of
22 this chapter.

23 §17004. Civil liability

24 Any person who violates any of the provisions of
25 this chapter is liable:

26 1. Actual damages; civil penalty. To the person
27 whose rights were violated, for actual damages and a
28 civil penalty in an amount equal to \$1,000 or 3 times
29 the amount of actual damages, whichever is greater;

30 2. Costs; attorneys' fees. For costs and reason-
31 able attorneys' fees; and

32 3. Equitable relief. For any equitable relief
33 which the court deems appropriate.

34 §17005. Advisory committee on AIDS

1 The "Committee to Advise the Department of Human
2 Services on AIDS," as established by section 12004,
3 subsection 18, shall consist of 15 members appointed
4 by the Governor from nominees submitted by the asso-
5 ciations named for each category where applicable:
6 One allopathic physician from nominees submitted by
7 the Maine Medical Association; one osteopathic physi-
8 cian from nominees submitted by the the Maine
9 Osteopathic Association; one nursing home administra-
10 tor from nominees submitted by the Maine Health Care
11 Association; one funeral director from nominees sub-
12 mitted by the Maine Funeral Directors Association;
13 one social worker from nominees submitted by the Na-
14 tional Association of Social Workers; one public
15 school administrator from a local school district
16 from nominees submitted by the Maine Superintendents
17 Association; one nurse from nominees submitted by the
18 Maine State Nurses Association; one representative
19 from nominees submitted by the Maine Hospice Council;
20 one teacher from nominees submitted by the Maine
21 Teachers Association; 2 members of the high risk com-
22 munity, one from nominees submitted by the Maine
23 Lesbian/Gay Political Alliance and one from nominees
24 submitted by the Hemophiliac Association; one insur-
25 ance industry representative; one employee of a com-
26 munity mental health center; one dentist from nomi-
27 nees submitted by the Maine Dental Association; one
28 state employee from nominees submitted by the Maine
29 State Employees Association; 2 members of the public,
30 including one parent of a school-age child; and the
31 Commissioner of Human Services or his designee who
32 shall serve during the commissioners term of office.
33 The members, except for those specifically designated
34 in this paragraph, shall be appointed by the Governor
35 for their competence and experience in connection
36 with these fields.

37 1. Membership. The term of office of each member
38 shall be 3 years; provided that of the members first
39 appointed, 1/3 shall be appointed for a term of one
40 year, 1/3 for terms of 2 years and 1/3 for terms of 3
41 years. The Governor shall designate a chairman and
42 vice-chairman to serve at the pleasure of the Gover-
43 nor. The chairman shall be the presiding member of
44 the committee. All vacancies shall be filled for the
45 balance of the unexpired term in the same manner as
46 original appointments. The members of the committee

1 shall be compensated in accordance with chapter 379.

2 2. Duties. The committee shall advise the de-
3 partment on:

4 A. Content and dissemination of educational ma-
5 terials;

6 B. Crises that may develop;

7 C. Coordination of services to persons with
8 AIDS, ARC or viral positivity;

9 D. Coordination of services for family and other
10 persons providing care and support to persons
11 with AIDS, ARC or viral positivity; and

12 E. AIDS related policy and proposed rules.

13 3. Meetings. The advisory committee shall meet
14 at least 4 times a year and more frequently if
15 needed to respond to the duties of this committee as
16 specified in subsection 2. Special meetings may be
17 called by the chairman and shall be called at the re-
18 quest of the State Epidemiologist, the Director of
19 the Bureau of Health, the Director of Disease Con-
20 trol, the Director of Sexually Transmitted Diseases
21 or by 3 or more members of the committee.

22 §17006. Confidentiality of test

23 The results of a test for the presence of an an-
24 tibody to HTLV-III, a test that measures the virus or
25 a test that measures the immune system for the pur-
26 pose of diagnosing AIDS related medical conditions
27 may be disclosed only as follows:

28 1. Subject of test. To the subject of the test;

29 2. Designated health care provider. To the
30 subject's designated health care provider in the
31 treatment of AIDS;

32 3. Authorized person. To a person or persons to
33 whom the test subject has authorized disclosure in
34 writing, except that the disclosure may not be used
35 to violate any other provision of this chapter;

1 4. Certain health care providers. A health care
2 provider who procures, processes, distributes or uses
3 a human body part donated for a purpose may, without
4 obtaining consent to the testing, test for the pres-
5 ence of an antibody to HTLV-III in order to assure
6 medical acceptability of the gift for the purpose in-
7 tended; or

8 5. Research facility. The department, a labora-
9 tory certified or a health care provider, blood bank,
10 blood center or plasma center may, for the purpose of
11 research and without first obtaining written consent
12 to the testing, subject any body fluids or tissues to
13 a test for the presence of an antibody to HTLV-III if
14 the testing is performed in a manner by which the
15 identity of the test subject is not known and may not
16 be retrieved by the researcher.

17 §17007. Restrictions upon insurers

18 No person, firm or company offering insurance may
19 with regard to policies issued or renewed on and af-
20 ter the effective date of this chapter:

21 1. Request for test history. Request directly or
22 indirectly any individual to reveal whether the indi-
23 vidual has obtained a test for the presence of an an-
24 tibody to HTLV-III, a test to measure the virus, a
25 test that measures the immune system or what the re-
26 sults of the tests were;

27 2. Coverage conditioned on testing prohibited.
28 Condition the provision of insurance coverage on
29 whether an individual has obtained a test for the
30 presence of an antibody to HTLV-III, a test to mea-
31 sure the virus, a test to measure the immune system
32 or the results of the tests; or

33 3. Rates. Consider in the determination of rates
34 or any other aspect of insurance coverage provided to
35 an individual whether an individual has obtained a
36 test for the presence of an antibody to HTLV-III, a
37 test to measure the virus or the results of the
38 tests.

39 §17008. Coordination of services to persons with
40 AIDS, ARC and viral positivity

1 1. Policy; services. It shall be the policy of
2 the State to provide to persons who test positive for
3 the HTLV-III virus or have been diagnosed as having
4 AIDS or ARC services of departments and agencies, in-
5 cluding, but not limited to: The Department of Educa-
6 tional and Cultural Services; the Department of Men-
7 tal Health and Retardation; the Department of Human
8 Services; and the Department of Corrections.

9 2. Coordination of services. A person designated
10 by the Commissioner of Human Services shall insure
11 coordination of new and existing services so as to
12 meet the needs of persons with AIDS, ARC and viral
13 positivity and identify gaps in programs.

14 The committee established in section 12004, subsec-
15 tion 10, shall work with the person designated in
16 this chapter to insure the coordination of services
17 to meet the needs of persons with AIDS, ARC and viral
18 positivity.

19 §17009. Civil liability

20 Any person violating sections 17006 and 17007 is
21 liable to the subject of the test for actual damages
22 and costs, including attorneys' fees, plus a civil
23 penalty of up to \$1,000 for a negligent violation and
24 up to \$5,000 for an intentional violation.

25 §17010. Rules

26 The Department of Human Services and the Bureau
27 of Health shall promulgate rules in accordance with
28 the provisions of the Maine Administrative Procedure
29 Act, chapter 375, governing procedures in this chap-
30 ter as it deems necessary to protect the public
31 health and safety, provided that the regulations are
32 not inconsistent with the provisions of this chapter.

33 Sec. 3. Appropriation. The following funds are
34 appropriated from the General Fund to carry out the
35 purposes of this Act.

36 1985-86

37 HUMAN SERVICES,
38 DEPARTMENT OF

1 All Other \$15,000

2 Sec. 4. Appropriation. The following funds are
3 appropriated from the General Fund to carry out the
4 purposes of this Act.

5 1985-86

6 HUMAN SERVICES,
7 DEPARTMENT OF

8 All Other \$50,000

9 Funds to be used for cre-
10 ation and dissemination of
11 educational materials con-
12 cerning AIDS and ARC.

13 Sec. 5. Appropriation. The following funds are
14 appropriated from the General Fund to carry out the
15 purposes of this Act.

16 1985-86

17 HUMAN SERVICES,
18 DEPARTMENT OF

19 All Other \$50,000

20 Funds to be used for coor-
21 dinating services provided
22 in this Act.

23 Emergency clause. In view of the emergency cited
24 in the preamble, this Act shall take effect when ap-
25 proved.

26 STATEMENT OF FACT

27 The purpose of this bill is reflected in the
28 emergency preamble.

29 4981012186