

MAINE STATE LEGISLATURE

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1 (EMERGENCY)
2 (New Draft of S.P. 818, L.D. 2063)
3 SECOND REGULAR SESSION
4

5 ONE HUNDRED AND TWELFTH LEGISLATURE
6

7 Legislative Document

No. 2367

8
9 S.P. 943

In Senate, April 10, 1986

10 Reported by Senator Gauvreau of Androscoggin from the Committee on
11 Human Resources and printed under Joint Rule 2. Original bill sponsored by
12 Senator Gill of Cumberland. Cosponsored by Representative Connolly of
Portland, Senator Clark of Cumberland and Representative Rydell of
Brunswick.

JOY J. O'BRIEN, Secretary of the Senate

13
14 STATE OF MAINE
15

16 IN THE YEAR OF OUR LORD
17 NINETEEN HUNDRED AND EIGHTY-SIX
18

19 AN ACT to Protect the Public Health in
20 Relation to Acquired Immune Deficiency
21 Syndrome.
22

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

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

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

34 Whereas, the Legislature finds and declares that
35 it is imperative to protect the individuals who have

1 or are suspected of having AIDS, ARC or other related
2 medical conditions; and

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

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

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

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

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

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

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

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

38 Be it enacted by the People of the State of Maine as
39 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 §17002
4 Advise the Only
5 Department of
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 icates otherwise, the following terms have the follow-
16 ing meanings.

17 1. Antibody to HTLV-III. "Antibody to HTLV-III"
18 means the specific immunoglobulin produced by the
19 body's immune system in response to the HTLV-III vi-
20 rus.

21 2. Health care provider. "Health care provider"
22 means any appropriately licensed, certified or regis-
23 tered provider of mental or physical health care, ei-
24 ther in the public or private sector or any business
25 establishment providing health care services.

26 3. HTLV-III. "HTLV-III" means the human T-cell
27 lymphotropic virus-type III, identified as the
28 causative agent of Acquired Immune Deficiency
29 Syndrome or AIDS.

30 4. HTLV-III antigen. "HTLV-III antigen" means
31 the specific immune-recognizable marker proteins of
32 the HTLV-III virus.

33 5. HTLV-III infection. "HTLV-III infection"
34 means the state wherein the HTLV-III virus has in-

1 vaded the body and is being actively harbored by the
2 body.

3 6. Person or anyone. "Person or anyone" means
4 any natural person, firm, corporation, partnership or
5 other organization, association or group, however or-
6 ganized.

7 7. Seropositivity. "Seropositivity" means the
8 presence of antibody to HTLV-III virus as detected by
9 appropriate laboratory tests.

10 8. Viral positivity. "Viral positivity" means
11 demonstrated presence of HTLV-III virus.

12 §17002. Committee to Advise the Department of Human
13 Services on AIDS

14 The Committee to Advise the Department of Human
15 Services on AIDS, as established by section 12004,
16 subsection 10, shall consist of not less than 25 mem-
17 bers nor more than 30 members to include representa-
18 tion of: One allopathic physician from nominees sub-
19 mitted by the Maine Medical Association; one
20 osteopathic physician from nominees submitted by the
21 the Maine Osteopathic Association; one nursing home
22 administrator from nominees submitted by the Maine
23 Health Care Association; one funeral director from
24 nominees submitted by the Maine Funeral Directors As-
25 sociation; one social worker from nominees submitted
26 by the Maine Chapter of the National Association of
27 Social Workers; one public school administrator from
28 a local school district from nominees submitted by
29 the Maine Superintendents Association; one nurse from
30 nominees submitted by the Maine State Nurses Associa-
31 tion; one representative from nominees submitted by
32 the Maine Hospice Council; one teacher from nominees
33 submitted by the Maine Teachers Association; 2 mem-
34 bers of the high risk community, one from nominees
35 submitted by the Maine Lesbian/Gay Political Alliance
36 and one from nominees submitted by the Hemophiliac
37 Association; one insurance industry representative;
38 one employee of a community mental health center; one
39 dentist from nominees submitted by the Maine Dental
40 Association; one state employee from nominees submit-
41 ted by the Maine State Employees Association; 2 mem-
42 bers of the public, including one parent of a

1 school-age child; the Commissioner of Human Services
2 or his designee who shall serve during the commis-
3 sioners term of office; one psychologist from nomi-
4 nees submitted by the Maine Psychological Associa-
5 tion; one state employee from nominees submitted by
6 the American Federation of State, County and Municip-
7 al Employees; one member representing hospitals from
8 nominees submitted by the Maine Hospital Association;
9 one member representing public health professionals
10 from nominees submitted by the Maine Public Health
11 Association; one representative of a nonprofit hospi-
12 tal or medical service organization; one substance
13 abuse counselor; and 2 Legislators, one representa-
14 tive appointed by the Speaker of the House of Repre-
15 sentatives and one Senator appointed by the President
16 of the Senate.

17 The members, except for those specifically desig-
18 nated in this paragraph, shall be appointed by the
19 Governor for their competence and experience in con-
20 nection with these fields.

21 1. Membership. The term of office of each member
22 shall be 3 years; provided that of the members first
23 appointed, 1/3 shall be appointed for a term of one
24 year, 1/3 for terms of 2 years and 1/3 for terms of 3
25 years. The Governor shall designate a chairman and
26 vice-chairman to serve at the pleasure of the Gover-
27 nor. The chairman shall be the presiding member of
28 the committee. All vacancies shall be filled for the
29 balance of the unexpired term in the same manner as
30 original appointments. The members of the committee
31 shall be compensated in accordance with chapter 379.

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

34 A. Content and dissemination of educational ma-
35 terials;

36 B. Crises that may develop;

37 C. Coordination of services to persons with
38 AIDS, AIDS Related Complex or viral positivity;

39 D. Coordination of services for family and other
40 persons providing care and support to persons

1 with AIDS, AIDS Related Complex or viral
2 positivity; and

3 E. AIDS related policy and proposed rules.

4 3. Meetings. The advisory committee shall meet
5 at least 4 times a year and more frequently if
6 needed to respond to the duties of this committee as
7 specified in subsection 2. Special meetings may be
8 called by the chairman and shall be called at the re-
9 quest of the State Epidemiologist, the Director of
10 the Bureau of Health, the Director of Disease Con-
11 trol, the Director of Sexually Transmitted Diseases
12 or by 3 or more members of the committee.

13 §17003. Confidentiality of test

14 No person may disclose the results of a test for
15 the presence of an antibody to HTLV-III, a test that
16 measures the HTLV-III antigen, except as follows:

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

18 2. Designated health care provider. To the
19 subject's designated health care provider in the
20 treatment of AIDS;

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

25 4. Certain health care providers. To a health
26 care provider who procures, processes, distributes or
27 uses a human body part donated for a purpose may,
28 without obtaining consent to the testing, test for
29 the presence of an antibody to HTLV-III in order to
30 assure medical acceptability of the gift for the pur-
31 pose intended;

32 5. Research facility. To the department, a labo-
33 ratory certified or a health care provider, blood
34 bank, blood center or plasma center may, for the pur-
35 pose of research and without first obtaining written
36 consent to the testing, subject any body fluids or
37 tissues to a test for the presence of an antibody to
38 HTLV-III if the testing is performed in a manner by

1 which the identity of the test subject is not known
2 and may not be retrieved by the researcher;

3 6. Bureau of Health. To the Bureau of Health,
4 to carry out its duties as provided in Title 22, sec-
5 tion 3, 7 and 42 and chapter 251; or

6 7. Other agencies. To other agencies responsi-
7 ble for the custodial care of individuals, such as
8 the Department of Corrections and the Department of
9 Mental Health and Mental Retardation.

10 §17004. Restrictions upon revealing HTLV-III anti-
11 body test results

12 No insurer, nonprofit hospital or medical ser-
13 vices organization or nonprofit health care plan may
14 request any person to reveal whether the person has
15 obtained a test for the presence of antibodies to the
16 HTLV-III virus, a test to measure the virus or the
17 results of such tests taken prior to an application
18 for insurance coverage.

19 This section is repealed on October 1, 1987.

20 §17005. Coordination of services to persons with
21 AIDS, AIDS Related Complex and viral
22 positivity

23 1. Policy; services. It shall be the policy of
24 the State to provide to persons who test positive for
25 the HTLV-III virus or have been diagnosed as having
26 AIDS or Aids Related Complex services of departments
27 and agencies, including, but not limited to, the De-
28 partment of Educational and Cultural Service, the De-
29 partment of Mental Health and Retardation, the De-
30 partment of Human Services and the Department of Cor-
31 rections.

32 2. Coordination of services. A person designated
33 by the Commissioner of Human Services shall insure
34 coordination of new and existing services so as to
35 meet the needs of persons with AIDS, Aids Related
36 Complex and viral positivity and identify gaps in
37 programs.

The committee established in section 12004, subsection 10, shall work with the person designated in this chapter to insure the coordination of services to meet the needs of persons with AIDS, ARC and viral positivity.

§17006. Civil liability

Any person violating sections 17003 and 17004 is liable to the subject of the test for actual damages and costs, including attorneys' fees, plus a civil penalty of up to \$1,000 for a negligent violation and up to \$5,000 for an intentional violation.

Any person may bring an action for injunctive relief for a violation of sections 17003 and 17004 in addition to or instead of the penalties provided in this section. The applicant for injunctive relief under this section shall not be required to give security as a condition upon the issuance of the injunction.

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

	<u>1985-86</u>	<u>1986-87</u>
<u>HUMAN SERVICES, DE-</u>		
<u>PARTMENT OF</u>		
Bureau of Health		
Positions		(2)
Personal Services		\$ 35,700
All Other	\$15,000	85,800
TOTAL	\$15,000	\$121,500

1 Provides funds
2 to disseminate
3 educational ma-
4 terials in fis-
5 cal year 1986
6 and to hire one
7 typist II and
8 one public
9 health nurse
10 and continue
11 dissemination
12 of educational
13 materials in
14 fiscal year
15 1987.

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17 Committee to Ad-
18 vise the Department
19 of Human Services on
20 AIDS

21 All Other \$12,000

22 Provides funds
23 for the travel
24 expenses of the
25 commission mem-
26 bers, 4 full
27 committee meet-
28 ings and 4 sub-
29 committee meet-
30 ings.

31 **Emergency clause.** In view of the emergency cited
32 in the preamble, this Act shall take effect when ap-
33 proved.

34 FISCAL NOTE

35 This new draft requires General Fund appropri-
36 ations to the Bureau of Health to provide and dissemi-
37 nate educational materials and General Fund appropri-
38 ations to the Legislature to provide travel expenses

for the commission members.

STATEMENT OF FACT

This new draft makes the following changes in the original bill:

1. Deletes the provisions of the bill prohibiting discrimination because the Maine Human Rights Act already prevents discrimination based on physical handicap;

2. Revises the composition of the Committee to Advise the Department of Human Services on AIDS to include representation from additional interested groups;

3. Amends the provisions establishing confidentiality of testing to prohibit the results of a test for the HTLV-III antibody from being released except in certain specific instances;

4. Amends the section restricting insurers to prohibit insurers from asking whether a person has taken the test for the HTLV-III virus or what the test results are. All other restrictions were deleted from the new draft. This provision is repealed automatically on October 1, 1987;

5. Adds a provision for injunctive relief to force violators to cease their illegal conduct;

6. Clarifies certain definitions and deletes all definitions which do not appear in the final version of the bill as amended; and

7. Amends the appropriation section to reflect more accurately when the funds will be spent.

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