

MAINE STATE LEGISLATURE

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L.D. 1490
(Filing No. H-325)

STATE OF MAINE
HOUSE OF REPRESENTATIVES
113TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1099, L.D. 1490, Bill, "AN ACT Requiring that Informed Consent be Given to those Persons Tested for the Presence of Antibodies to HTLV-III."

Amend the bill by striking out all of the title and inserting in its place the following:

'AN ACT Requiring that Informed Consent be Given to those Persons Tested for the Presence of Antibodies to HIV and to Make Technical Changes in the Chapter Dealing with AIDS.'

Further amend the bill by striking out everything after the title and inserting in its place the following:

'Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, this Act reallocates the chapter of Maine law dealing with AIDS because it currently occupies the same identical position in the laws as the Maine State Retirement System laws; and

Whereas, there will be a conflict with legislation enacted this year if this chapter is not reallocated prior to the effective date of other legislation enacted this year; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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1 Be it enacted by the People of the State of Maine as
2 follows:

3 Sec. 1. 5 MRSA Pt. 20, as enacted by PL 1985, c.
4 711, §2, is repealed.

5 Sec. 2. 5 MRSA Pt. 22 is enacted to read:

6 PART 22

7 PUBLIC HEALTH

8 CHAPTER 501

9 MEDICAL CONDITIONS

10 §19201. Definitions

11 As used in this chapter, unless the context indi-
12 cates otherwise, the following terms have the follow-
13 ing meanings.

14 1. Antibody to HIV. "Antibody to HIV" means the
15 specific immunoglobulin produced by the body's immune
16 system in response to HIV.

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

22 3. HIV. "HIV" means the human immunodeficiency
23 virus, identified as the causative agent of Acquired
24 Immune Deficiency Syndrome or AIDS.

25 4. HIV antigen. "HIV antigen" means the specific
26 immune-recognizable marker proteins of HIV.

27 5. HIV infection. "HIV infection" means the
28 state wherein HIV has invaded the body and is being

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1 actively harbored by the body.

2 5-A. Informed consent. "Informed consent" means
3 consent that is:

4 A. Based on an actual understanding by the per-
5 son to be tested:

6 (1) That the test is being performed;

7 (2) Of the nature of the test;

8 (3) The persons to whom the results of that
9 test may be disclosed;

10 (4) The purpose for which the test results
11 may be used; and

12 (5) All foreseeable risks and benefits re-
13 sulting from the test; and

14 B. Wholly voluntary and free from express or im-
15 plied coercion.

16 6. Person. "Person" means any natural person,
17 firm, corporation, partnership or other organization,
18 association or group, however organized.

19 7. Seropositivity. "Seropositivity" means the
20 presence of antibody to HIV as detected by appropri-
21 ate laboratory tests.

22 8. Viral positivity. "Viral positivity" means
23 demonstrated presence of HIV.

24 §19202. Committee to Advise the Department of Human
25 Services on AIDS

26 The Committee to Advise the Department of Human
27 Services on AIDS, as established by section 12004,
28 subsection 10, shall consist of not less than 26 mem-
29 bers nor more than 30 members to include representa-

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1 tion of: One allopathic physician from nominees sub-
2 mitted by the Maine Medical Association; one
3 osteopathic physician from nominees submitted by the
4 the Maine Osteopathic Association; one nursing home
5 administrator from nominees submitted by the Maine
6 Health Care Association; one funeral director from
7 nominees submitted by the Maine Funeral Directors As-
8 sociation; one social worker from nominees submitted
9 by the Maine Chapter of the National Association of
10 Social Workers; one public school administrator from
11 a local school district from nominees submitted by
12 the Maine Superintendents Association; one nurse from
13 nominees submitted by the Maine State Nurses Associa-
14 tion; one representative from nominees submitted by
15 the Maine Hospice Council; one teacher from nominees
16 submitted by the Maine Teachers Association; 2 mem-
17 bers of the high risk community; one insurance indus-
18 try representative; one employee of a community men-
19 tal health center; one dentist from nominees submit-
20 ted by the Maine Dental Association; one state em-
21 ployee from nominees submitted by the Maine State Em-
22 ployees Association; 2 members of the public, includ-
23 ing one parent of a school-age child; the Commission-
24 er of Human Services or his designee who shall serve
25 during the commissioners term of office; one psychol-
26 ogist from nominees submitted by the Maine Psycholog-
27 ical Association; one state employee from nominees
28 submitted by the American Federation of State, County
29 and Municipal Employees; one member representing hos-
30 pitals from nominees submitted by the Maine Hospital
31 Association; one member representing public health
32 professionals from nominees submitted by the Maine
33 Public Health Association; one representative of a
34 nonprofit hospital or medical service organization;
35 one substance abuse counselor; one member of the
36 clergy; and 2 Legislators, one representative ap-
37 pointed by the Speaker of the House and one Senator
38 appointed by the President of the Senate. The mem-
39 bers, except for those specifically designated in
40 this paragraph, shall be appointed by the Governor
41 for their competence and experience in connection
42 with these fields.

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1 1. Membership. The term of office of each member
2 shall be 3 years; provided that of the members first
3 appointed, 1/3 shall be appointed for a term of one
4 year, 1/3 for terms of 2 years and 1/3 for terms of 3
5 years. The Governor shall designate a chairman and
6 vice-chairman to serve at the pleasure of the Gover-
7 nor. The chairman shall be the presiding member of
8 the committee. All vacancies shall be filled for the
9 balance of the unexpired term in the same manner as
10 original appointments. The members of the committee
11 shall be compensated in accordance with chapter 379.

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

14 A. Content and dissemination of educational ma-
15 terials;

16 B. Crises that may develop;

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

19 D. Coordination of services for family and other
20 persons providing care and support to persons
21 with AIDS, AIDS Related Complex or viral
22 positivity; and

23 E. AIDS related policy and proposed rules.

24 3. Meetings. The advisory committee shall meet
25 at least 4 times a year and more frequently if
26 needed to respond to the duties of this committee as
27 specified in subsection 2. Special meetings may be
28 called by the chairman and shall be called at the re-
29 quest of the State Epidemiologist, the Director of
30 the Bureau of Health, the Director of Disease Con-
31 trol, the Director of Sexually Transmitted Diseases
32 or by 3 or more members of the committee.

33 \$19203. Confidentiality of test

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1 No person may disclose the results of a test for
2 the presence of an antibody to HIV, a test that mea-
3 sures the HIV antigen, except as follows:

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

5 2. Designated health care provider. To the
6 subject's designated health care provider in the
7 treatment of AIDS;

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

12 4. Certain health care providers. A health care
13 provider who procures, processes, distributes or uses
14 a human body part donated for a purpose may, without
15 obtaining informed consent to the testing, test for
16 the presence of an antibody to HIV in order to assure
17 medical acceptability of the gift for the purpose in-
18 tended;

19 5. Research facility. The Department of Human
20 Services, a laboratory certified and approved by the
21 Department of Human Services pursuant to Title 22,
22 chapter 411, or a health care provider, blood bank,
23 blood center or plasma center may, for the purpose of
24 research and without first obtaining informed consent
25 to the testing, subject any body fluids or tissues to
26 a test for the presence of an antibody to HIV if the
27 testing is performed in a manner by which the identi-
28 ty of the test is subject is not known and may not be
29 retrieved by the researcher;

30 6. Anonymous testing sites. The Department of
31 Human Services may designate or establish certifica-
32 tion and approval standards for and support anonymous
33 testing sites where an individual may request and HIV
34 test under conditions which ensure anonymity; or

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1 7. Other agencies. To other agencies responsi-
2 ble for the custodial care of individuals, such as
3 the Department of Corrections and the Department of
4 Mental Health and Mental Retardation.

5 This section does not prohibit limited adminis-
6 trative disclosure in conjunction with a mandatory
7 testing program of a military organization subject to
8 Title 37-B.

9 §19203-A. Informed consent required

10 1. Individual tested. Except as provided in
11 section 19203, subsections 4 and 5, no person may
12 test for the presence of antibodies to HIV without
13 first obtaining the written informed consent of the
14 person to be tested. Anonymous test sites under sec-
15 tion 19203, subsection 6, are exempt from the re-
16 quirement that the informed consent be in writing.

17 2. Insurers. Persons required to take the HIV
18 antibody test by an insurer, nonprofit hospital or
19 medical service organization or nonprofit health care
20 plan must provide their written informed consent on
21 forms approved by the Superintendent of Insurance.
22 The superintendent may promulgate rules to define
23 language requirements of the form.

24 §19204. Restrictions upon revealing HIV antibody
25 test results

26 No insurer, nonprofit hospital or medical ser-
27 VICES organization or nonprofit health care plan may
28 request any person to reveal whether the person has
29 obtained a test for the presence of antibodies to
30 HIV, a test to measure the virus or the results of
31 such tests taken prior to an application for insur-
32 ance coverage.

33 This section is repealed on October 1, 1988.

34 §19204-A. Post-test counseling

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1 Persons who are required to give their informed
2 consent to an HIV test shall be offered post-test
3 counseling. The counseling shall include:

4 1. Test result. The test results and the sig-
5 nificance of the test results;

6 2. Social and emotional consequences. The so-
7 cial and emotional consequences of the information;

8 3. Preventive practices. Information on good
9 preventive practices and risk reduction plans; and

10 4. Referrals. Referrals for medical care and
11 other support services as needed.

12 §19205. Coordination of services to persons with
13 AIDS, AIDS Related Complex and viral
14 positivity

15 1. Policy; services. It shall be the policy of
16 the State to provide to persons who test positive for
17 HIV or have been diagnosed as having AIDS or Aids Re-
18 lated Complex services of departments and agencies,
19 including, but not limited to, the Department of Edu-
20 cational and Cultural Service, the Department of Men-
21 tal Health and Retardation, the Department of Human
22 Services and the Department of Corrections.

23 2. Coordination of services. A person designated
24 by the Commissioner of Human Services shall insure
25 coordination of new and existing services so as to
26 meet the needs of persons with AIDS, Aids Related
27 Complex and viral positivity and identify gaps in
28 programs.

29 The committee established in section 12004, subsec-
30 tion 10, shall work with the person designated in
31 this chapter to insure the coordination of services
32 to meet the needs of persons with AIDS, ARC and viral
33 positivity.

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1 §19206. Civil liability

2 Any person violating sections 19203 and 19204 is
3 liable to the subject of the test for actual damages
4 and costs plus a civil penalty of up to \$1,000 for a
5 negligent violation and up to \$5,000 for an inten-
6 tional violation.

7 Any person may bring an action for injunctive re-
8 lief for a violation of sections 19203 and 19204 in
9 addition to or instead of the penalties provided in
10 this section. The applicant for injunctive relief
11 under this section shall not be required to give se-
12 curity as a condition upon the issuance of the in-
13 junction.

14 §19207. Civil liability

15 Any person violating sections 19203 and 19204 is
16 liable to the subject of the test for actual damages
17 and costs plus a civil penalty of up to \$1,000 for a
18 negligent violation and up to \$5,000 for an inten-
19 tional violation.

20 Any person may bring an action for injunctive re-
21 lief for a violation of sections 19203 and 19204 in
22 addition to or instead of the penalties provided in
23 this section. The applicant for injunctive relief
24 under this section shall not be required to give se-
25 curity as a condition upon the issuance of the in-
26 junction.

27 Emergency clause. In view of the emergency cited
28 in the preamble, this Act shall take effect when ap-
29 proved.'

30 STATEMENT OF FACT

31 This amendment was introduced to require informed

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1 consent prior to administering the HIV antibody test.
2 This amendment enacts the following provisions con-
3 cerning informed consent:

4 1. It adds a definition of informed consent;

5 2. It requires individuals to give their written
6 informed consent to the test except when the test is
7 done for research purposes or for donations of human
8 body parts;

9 3. It adds a section defining anonymous testing
10 sites established by the Department of Human Services
11 and exempts the anonymous testing sites from the re-
12 quirement that the informed consent be in writing;

13 4. It requires insurers who require HIV tests to
14 submit the written informed consent of the applicant
15 on forms approved by the Superintendent of Insurance;
16 and

17 5. It adds a requirement for post-test counsel-
18 ing.

19 In addition, this amendment makes 2 technical
20 changes to the Maine Revised Statutes, Title 5, chap-
21 ter 501.

22 1. It changes the designation of the virus from
23 "HTLV-III" TO "HIV" and it reallocates the entire
24 chapter of law concerning AIDS from Part 20, sections
25 17001 to 17006 to Part 22, sections 19201 to 19206.

26 These changes are essential. "HIV" is the cor-
27 rect medical designation for the virus. Reallocation
28 of the entire chapter means that the law is merely
29 moved from one section of the law to another section
30 of the law. In this case, it is being moved because
31 2 laws were enacted last year and given the same sec-
32 tion numbers, this chapter and the recodification of
33 the Maine State Retirement System.

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1 This chapter is being reallocated to avoid conflict.
2 It is being enacted as an emergency legislation to
3 avoid potential confusion with amendments to the re-
4 tirement laws which were enacted this year.

5 The reallocation would normally take place in the
6 errors bill. If the reallocation took place in the
7 errors bill, any amendments to that chapter which
8 were enacted this year would be amending the retire-
9 ment laws and not this chapter. Accordingly, the re-
10 allocation is being enacted by this legislation to
11 coordinate the original amendments in Legislative
12 Document 1490 into the reallocation provisions.

13 Likewise 2 other bills which were enacted by the
14 Legislature this year amended the chapter before it
15 was reallocated. They are included in this realloca-
16 tion. Those bills are Legislative Document 1515 and
17 Legislative Document 1538. They will be repealed by
18 section 1 of this committee amendment and will be re-
19 enacted by this reallocation.

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