

... 209, amended & No Pass (4-5581) 3/27

FILED MAR 9 1992

SENATE FILE 2323
BY COMMITTEE ON HUMAN RESOURCES
approved (p. 1075) 4/16/92
(SUCCESSOR TO SSB 2254)

Passed Senate, Date 3/17/92 (p. 819) Passed House, Date 4/6/92 (p. 1075)
Vote: Ayes 47 Nays 0 Vote: Ayes 95 Nays 0

Approved April 27, 1992 (p. 1670)

*Repassed Senate 4/8/92 (p. 1302)
Ayes 47 Nays 0*

A BILL FOR

1 An Act relating to the prevention of the transmission of HIV or
2 the hepatitis B virus to patients, providing penalties, and
3 providing for a repeal.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 2323

1 Section 1. NEW SECTION. 139C.1 DEFINITIONS.

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. "Department" means the Iowa department of public
5 health.

6 2. "Exposure-prone procedure" means a procedure performed
7 by a health care provider which presents a recognized risk of
8 percutaneous injury to the health care provider and if such an
9 injury occurs, the health care provider's blood is likely to
10 contact a patient's body cavity, subcutaneous tissues, or
11 mucous membranes or "exposure-prone procedure" as defined
12 subsequently by the centers for disease control of the United
13 States department of health and human services.

14 3. "HBV" means hepatitis B virus.

15 4. "Health care facility" means a health care facility as
16 defined in section 135C.1, an ambulatory surgical center, or a
17 clinic.

18 5. "Health care provider" means a person licensed to
19 practice medicine and surgery, osteopathic medicine and
20 surgery, osteopathy, podiatry, nursing, dentistry, optometry,
21 or as a physician assistant or dental hygienist.

22 6. "HIV" means HIV as defined in section 141.21.

23 7. "Hospital" means hospital as defined in section 135B.1.

24 Sec. 2. NEW SECTION. 139C.2 PREVENTION OF TRANSMISSION
25 OF HIV OR HBV TO PATIENTS.

26 1. Each hospital shall adopt procedures requiring the
27 establishment of protocols applicable on a case-by-case basis
28 to a health care provider determined to be infected with HIV
29 or HBV who ordinarily performs exposure-prone procedures as
30 determined by an expert review panel, within the hospital
31 setting. The protocols established shall be in accordance
32 with the recommendations issued by the centers for disease
33 control of the United States department of health and human
34 services. The expert review panel may be an established
35 committee of the hospital. The procedures may provide for

1 referral of the health care provider to the expert review
2 panel established by the department for establishment of the
3 protocols. The procedures shall require reporting
4 noncompliance with the protocols by a health care provider to
5 the examining board with jurisdiction over the health care
6 providers.

7 2. Each health care facility shall adopt procedures in
8 accordance with recommendations issued by the center for
9 disease control of the United States department of health and
10 human services, applicable to a health care provider
11 determined to be infected with HIV or HBV who ordinarily
12 performs or assists with exposure-prone procedures within the
13 facility. The procedures shall require referral of the health
14 care provider to the expert review panel established by the
15 department.

16 3. The department shall establish an expert review panel
17 to determine on a case-by-case basis under what circumstances,
18 if any, a health care provider determined to be infected with
19 HIV or HBV practicing outside the hospital setting or referred
20 to the panel by a hospital, may perform exposure-prone
21 procedures. If a health care provider determined to be
22 infected with HIV or HBV does not comply with the
23 determination of the expert review panel, the panel shall
24 report the noncompliance to the examining board with
25 jurisdiction over the health care provider. A determination
26 of an expert review panel pursuant to this section is a final
27 agency action appealable pursuant to section 17A.19.

28 4. A health care provider determined to be infected with
29 HIV or HBV shall not perform an exposure-prone procedure in a
30 nonhospital setting except as approved by the expert review
31 panel established by the department pursuant to subsection 3,
32 or in a hospital setting, except as in compliance with the
33 protocol established by the hospital pursuant to subsection 1.

34 5. The board of medical examiners, the board of physician
35 assistant examiners, the board of podiatry examiners, the

1 board of nursing, the board of dental examiners, and the board
2 of optometry examiners shall require that licensees comply
3 with the recommendations for preventing transmission of human
4 immuno-deficiency virus and hepatitis B virus to patients
5 during exposure-prone invasive procedures issued by the
6 centers for disease control of the United States department of
7 health and human services, or with the recommendations of the
8 expert review panel established pursuant to subsection 3, and
9 applicable hospital protocols established pursuant to
10 subsection 1.

11 6. Information relating to the HIV status of a health care
12 provider is confidential and subject to the provisions of sec-
13 tion 141.23. A person who intentionally or recklessly makes
14 an unauthorized disclosure of such information is subject to a
15 civil penalty of one thousand dollars. The attorney general
16 or the attorney general's designee may maintain a civil action
17 to enforce this section. Proceedings maintained under this
18 section shall provide for the anonymity of the individual and
19 all documentation shall be maintained in a confidential
20 manner. Information relating to the HBV status of a health
21 care provider is confidential and shall not be accessible to
22 the public. Information regulated by this section, however,
23 may be disclosed to members of the expert review panel
24 established by the department or a panel established by
25 hospital protocol under this section. The information may
26 also be disclosed to the appropriate examining board by filing
27 a report as required by this section. The examining board
28 shall consider the report a complaint subject to the
29 confidentiality provisions of section 258A.6. A licensee,
30 upon the filing of a formal charge or notice of hearing by the
31 examining board based on such a complaint, may seek a
32 protective order from the board.

33 7. The expert review panel established by the department
34 and individual members of the panel shall be immune from any
35 liability, civil or criminal, for the good faith performance

1 of functions authorized or required by this section. A
2 hospital, an expert review panel established by the hospital,
3 and individual members of the panel shall be immune from any
4 liability, civil or criminal, for the good faith performance
5 of functions authorized or required by this section.
6 Complaints, investigations, reports, deliberations, and
7 findings of the hospital and its panel with respect to a named
8 health care provider suspected, alleged, or found to be in
9 violation of the protocol required by this section, constitute
10 peer review records under section 147.135, and are subject to
11 the specific confidentiality requirements and limitations of
12 this section.

13 Sec. 3. NEW SECTION. 139C.3 CONTINGENT REPEAL.

14 If the provisions of Pub. L. No. 102-141 relating to
15 requirements for prevention of transmission of HIV or HBV to
16 patients in the performance of exposure-prone procedures are
17 repealed, this chapter is repealed.

18 EXPLANATION

19 The bill provides for the development of procedures to
20 prevent the transmission of the human immuno-deficiency virus
21 (HIV) or the hepatitis B virus (HBV) to patients in hospital
22 and nonhospital settings through exposure-prone procedures.
23 Provisions are provided for protecting the confidentiality of
24 health care providers who are determined to be infected with
25 HIV or HBV. Penalties are provided for violation of
26 confidentiality requirements, and immunity from liability is
27 provided for good faith performance of actions authorized
28 under the bill. The bill is repealed if federal requirements
29 relating to prevention of transmission of HIV or HBV to
30 patients through exposure-prone procedures are repealed.

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SENATE FILE 2323

H-5581

1 Amend Senate File 2323, as passed by the Senate, as
2 follows:

3 1. Page 2, by inserting after line 27, the
4 following:

5 "____. The health care provider determined to be
6 infected with HIV or HBV, who works in a hospital
7 setting, may elect either the expert review panel
8 established by the hospital or the expert review panel
9 established by the department for the purpose of
10 making a determination of the circumstances under
11 which the health care provider may perform exposure-
12 prone procedures."

13 2. Page 2, lines 29 and 30, by striking the words
14 "in a nonhospital setting".

15 3. Page 2, by striking line 32 and inserting the
16 following: "or in compliance with the".

17 4. By numbering and renumbering as necessary.

By HUMAN RESOURCES COMMITTEE
HAVERLAND of Polk, Chairperson

H-5581 FILED MARCH 27, 1992

Adopted 4/6 (p 1075)

HOUSE AMENDMENT TO
SENATE FILE 2323

S-5569

1 Amend Senate File 2323, as passed by the Senate, as
2 follows:

3 1. Page 2, by inserting after line 27, the
4 following:

5 " . The health care provider determined to be
6 infected with HIV or HBV, who works in a hospital
7 setting, may elect either the expert review panel
8 established by the hospital or the expert review panel
9 established by the department for the purpose of
10 making a determination of the circumstances under
11 which the health care provider may perform exposure-
12 prone procedures."

13 2. Page 2, lines 29 and 30, by striking the words
14 "in a nonhospital setting".

15 3. Page 2, by striking line 32 and inserting the
16 following: "or in compliance with the".

17 4. By numbering and renumbering as necessary.

RECEIVED FROM THE HOUSE

S-5569 FILED APRIL 6, 1992

Senate concurred 4/8/92 (p. 1302)

STURGEON, CH.
HANNON
LUNA
KRAMER
HAGERLA

SSB 2254
HUMAN RESOURCES
NOW

SENATE FILE 2323
BY (PROPOSED COMMITTEE ON
HUMAN RESOURCES BILL BY
CHAIRPERSON HANNON)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the prevention of the transmission of HIV or
2 the hepatitis B virus to patients, providing penalties, and
3 providing for a repeal.

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1 Section 1. NEW SECTION. 139C.1 DEFINITIONS.

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. "Department" means the Iowa department of public
5 health.

6 2. "Exposure-prone procedure" means a procedure performed
7 by a health care provider which presents a recognized risk of
8 percutaneous injury to the health care provider and if such an
9 injury occurs, the health care provider's blood is likely to
10 contact a patient's body cavity, subcutaneous tissues, or
11 mucous membranes or "exposure-prone procedure" as defined
12 subsequently by the centers for disease control of the United
13 States department of health and human services.

14 3. "HBV" means hepatitis B virus.

15 4. "Health care facility" means a health care facility as
16 defined in section 135C.1, an ambulatory surgical center, or a
17 clinic.

18 5. "Health care provider" means health care provider as
19 defined in section 141.21.

20 6. "HIV" means HIV as defined in section 141.21.

21 7. "Hospital" means hospital as defined in section 135B.1.

22 Sec. 2. NEW SECTION. 139C.2 PREVENTION OF TRANSMISSION
23 OF HIV OR HBV TO PATIENTS.

24 1. Each hospital shall adopt procedures requiring the
25 establishment of protocols applicable on a case-by-case basis
26 to a health care provider determined to be infected with HIV
27 or HBV who ordinarily performs exposure-prone procedures as
28 determined by an expert review panel, within the hospital
29 setting. The protocols established shall be in accordance
30 with the recommendations issued by the centers for disease
31 control of the United States department of health and human
32 services. The expert review panel may be an established
33 committee of the hospital. The procedures may provide for
34 referral of the health care provider to the expert review
35 panel established by the department for establishment of the

1 protocols. The procedures shall require reporting
2 noncompliance with the protocols by a health care provider to
3 the examining board with jurisdiction over the health care
4 providers.

5 2. Each health care facility shall adopt procedures in
6 accordance with recommendations issued by the center for
7 disease control of the United States department of health and
8 human services, applicable to a health care provider
9 determined to be infected with HIV or HBV who ordinarily
10 performs or assists with exposure-prone procedures within the
11 facility. The procedures shall require referral of the health
12 care provider to the expert review panel established by the
13 department.

14 3. The department shall establish an expert review panel
15 to determine on a case-by-case basis under what circumstances,
16 if any, a health care provider determined to be infected with
17 HIV or HBV practicing outside the hospital setting or referred
18 to the panel by a hospital, may perform exposure-prone
19 procedures. If a health care provider determined to be
20 infected with HIV or HBV does not comply with the
21 determination of the expert review panel, the panel shall
22 report the noncompliance to the examining board with
23 jurisdiction over the health care provider. A determination
24 of an expert review panel pursuant to this section is a final
25 agency action appealable pursuant to section 17A.19.

26 4. A health care provider licensed to practice medicine
27 and surgery, osteopathic medicine and surgery, osteopathy,
28 podiatry, nursing, dentistry, or optometry, or as a physician
29 assistant or dental hygienist, determined to be infected with
30 HIV or HBV shall not perform an exposure-prone procedure in a
31 nonhospital setting except as approved by the expert review
32 panel established by the department pursuant to subsection 3,
33 or in a hospital setting, except as in compliance with the
34 protocol established by the hospital pursuant to subsection 1.

35 5. The board of medical examiners, the board of physician

1 assistant examiners, the board of podiatry examiners, the
2 board of nursing, the board of dental examiners, and the board
3 of optometry examiners shall require that licensees comply
4 with the recommendations for preventing transmission of human
5 immuno-deficiency virus and hepatitis B virus to patients
6 during exposure-prone invasive procedures issued by the
7 centers for disease control of the United States department of
8 health and human services, or with the recommendations of the
9 expert review panel established pursuant to subsection 3, and
10 applicable hospital protocols established pursuant to
11 subsection 1.

12 6. Information relating to the HIV status of a health care
13 provider is confidential and subject to the provisions of sec-
14 tion 141.23. A person who intentionally or recklessly makes
15 an unauthorized disclosure of such information is subject to a
16 civil penalty of one thousand dollars. The attorney general
17 or the attorney general's designee may maintain a civil action
18 to enforce this section. Proceedings maintained under this
19 section shall provide for the anonymity of the individual and
20 all documentation shall be maintained in a confidential
21 manner. Information relating to the HBV status of a health
22 care provider is confidential and shall not be accessible to
23 the public. Information regulated by this section, however,
24 may be disclosed to members of the expert review panel
25 established by the department or a panel established by
26 hospital protocol under this section. The information may
27 also be disclosed to the appropriate examining board by filing
28 a report as required by this section. The examining board
29 shall consider the report a complaint subject to the
30 confidentiality provisions of section 258A.6. A licensee,
31 upon the filing of a formal charge or notice of hearing by the
32 examining board based on such a complaint, may seek a
33 protective order from the board.

34 7. The expert review panel established by the department
35 and individual members of the panel shall be immune from any

1 liability, civil or criminal, for the good faith performance
 2 of functions authorized or required by this section. A
 3 hospital, an expert review panel established by the hospital,
 4 and individual members of the panel shall be immune from any
 5 liability, civil or criminal, for the good faith performance
 6 of functions authorized or required by this section.
 7 Complaints, investigations, reports, deliberations, and
 8 findings of the hospital and its panel with respect to a named
 9 health care provider suspected, alleged, or found to be in
 10 violation of the protocol required by this section, constitute
 11 peer review records under section 147.135, and are subject to
 12 the specific confidentiality requirements and limitations of
 13 this section.

14 Sec. 3. NEW SECTION. 139C.3, CONTINGENT REPEAL.

15 If the provisions of Pub. L. No. 102-141 relating to
 16 requirements for prevention of transmission of HIV or HBV to
 17 patients in the performance of exposure-prone procedures are
 18 repealed, this chapter is repealed.

19 EXPLANATION

20 The bill provides for the development of procedures to
 21 prevent the transmission of the human immuno-deficiency virus
 22 (HIV) or the hepatitis B virus (HBV) to patients in hospital
 23 and nonhospital settings through exposure-prone procedures.
 24 Provisions are provided for protecting the confidentiality of
 25 health care providers who are determined to be infected with
 26 HIV or HBV. Penalties are provided for violation of
 27 confidentiality requirements, and immunity from liability is
 28 provided for good faith performance of actions authorized
 29 under the bill. The bill is repealed if federal requirements
 30 relating to prevention of transmission of HIV or HBV to
 31 patients through exposure-prone procedures are repealed.

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SENATE FILE 2323

AN ACT

RELATING TO THE PREVENTION OF THE TRANSMISSION OF HIV OR THE
HEPATITIS B VIRUS TO PATIENTS, PROVIDING PENALTIES, AND
PROVIDING FOR A REPEAL.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. 139C.1 DEFINITIONS.

As used in this chapter, unless the context otherwise
requires:

1. "Department" means the Iowa department of public health.
2. "Exposure-prone procedure" means a procedure performed by a health care provider which presents a recognized risk of percutaneous injury to the health care provider and if such an injury occurs, the health care provider's blood is likely to contact a patient's body cavity, subcutaneous tissues, or mucous membranes or "exposure-prone procedure" as defined subsequently by the centers for disease control of the United States department of health and human services.
3. "HBV" means hepatitis B virus.
4. "Health care facility" means a health care facility as defined in section 135C.1, an ambulatory surgical center, or a clinic.
5. "Health care provider" means a person licensed to practice medicine and surgery, osteopathic medicine and surgery, osteopathy, podiatry, nursing, dentistry, optometry, or as a physician assistant or dental hygienist.
6. "HIV" means HIV as defined in section 141.21.

7. "Hospital" means hospital as defined in section 135B.1.
Sec. 2. NEW SECTION. 139C.2 PREVENTION OF TRANSMISSION
OF HIV OR HBV TO PATIENTS.

1. Each hospital shall adopt procedures requiring the establishment of protocols applicable on a case-by-case basis to a health care provider determined to be infected with HIV or HBV who ordinarily performs exposure-prone procedures as determined by an expert review panel, within the hospital setting. The protocols established shall be in accordance with the recommendations issued by the centers for disease control of the United States department of health and human services. The expert review panel may be an established committee of the hospital. The procedures may provide for referral of the health care provider to the expert review panel established by the department for establishment of the protocols. The procedures shall require reporting noncompliance with the protocols by a health care provider to the examining board with jurisdiction over the health care providers.

2. Each health care facility shall adopt procedures in accordance with recommendations issued by the center for disease control of the United States department of health and human services, applicable to a health care provider determined to be infected with HIV or HBV who ordinarily performs or assists with exposure-prone procedures within the facility. The procedures shall require referral of the health care provider to the expert review panel established by the department.

3. The department shall establish an expert review panel to determine on a case-by-case basis under what circumstances, if any, a health care provider determined to be infected with HIV or HBV practicing outside the hospital setting or referred to the panel by a hospital, may perform exposure-prone procedures. If a health care provider determined to be infected with HIV or HBV does not comply with the

determination of the expert review panel, the panel shall report the noncompliance to the examining board with jurisdiction over the health care provider. A determination of an expert review panel pursuant to this section is a final agency action appealable pursuant to section 17A.19.

4. The health care provider determined to be infected with HIV or HBV, who works in a hospital setting, may elect either the expert review panel established by the hospital or the expert review panel established by the department for the purpose of making a determination of the circumstances under which the health care provider may perform exposure-prone procedures.

5. A health care provider determined to be infected with HIV or HBV shall not perform an exposure-prone procedure except as approved by the expert review panel established by the department pursuant to subsection 3, or in compliance with the protocol established by the hospital pursuant to subsection 1.

6. The board of medical examiners, the board of physician assistant examiners, the board of podiatry examiners, the board of nursing, the board of dental examiners, and the board of optometry examiners shall require that licensees comply with the recommendations for preventing transmission of human immuno-deficiency virus and hepatitis B virus to patients during exposure-prone invasive procedures issued by the centers for disease control of the United States department of health and human services, or with the recommendations of the expert review panel established pursuant to subsection 3, and applicable hospital protocols established pursuant to subsection 1.

7. Information relating to the HIV status of a health care provider is confidential and subject to the provisions of section 141.23. A person who intentionally or recklessly makes an unauthorized disclosure of such information is subject to a civil penalty of one thousand dollars. The attorney general

or the attorney general's designee may maintain a civil action to enforce this section. Proceedings maintained under this section shall provide for the anonymity of the individual and all documentation shall be maintained in a confidential manner. Information relating to the HBV status of a health care provider is confidential and shall not be accessible to the public. Information regulated by this section, however, may be disclosed to members of the expert review panel established by the department or a panel established by hospital protocol under this section. The information may also be disclosed to the appropriate examining board by filing a report as required by this section. The examining board shall consider the report a complaint subject to the confidentiality provisions of section 258A.6. A licensee, upon the filing of a formal charge or notice of hearing by the examining board based on such a complaint, may seek a protective order from the board.

8. The expert review panel established by the department and individual members of the panel shall be immune from any liability, civil or criminal, for the good faith performance of functions authorized or required by this section. A hospital, an expert review panel established by the hospital, and individual members of the panel shall be immune from any liability, civil or criminal, for the good faith performance of functions authorized or required by this section. Complaints, investigations, reports, deliberations, and findings of the hospital and its panel with respect to a named health care provider suspected, alleged, or found to be in violation of the protocol required by this section, constitute peer review records under section 147.135, and are subject to the specific confidentiality requirements and limitations of this section.

Sec. 3. NEW SECTION. 139C.3 CONTINGENT REPEAL.

If the provisions of Pub. L. No. 102-141 relating to requirements for prevention of transmission of HIV or HBV to

patients in the performance of exposure-prone procedures are repealed, this chapter is repealed.

MICHAEL E. GRONSTAL
President of the Senate

ROBERT C. ARNOULD
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2323, Seventy-fourth General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved April 27, 1992

TERRY E. BRANSTAD
Governor

SF 2323