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Place On Calendar

HOUSE FILE 2294

BY COMMITTEE ON HUMAN  
RESOURCES

(Formerly House Study Bill 521)

Passed House, Date 2/20/88 (2 529) Passed Senate, Date 3/17/88 (2 277)

Vote: Ayes 18 Nays 6 Vote: Ayes 88 Nays 8

Approved May 12, 1988

*Advised to committee by 5007*

A BILL FOR

1 An Act relating to testing for and confidentiality of human  
2 immunodeficiency virus-related matters and providing  
3 penalties.

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

HOUSE FILE 2294

H-5346

1 Amend House File 2294 as follows:

2 1. Page 3, line 33, by inserting after the word  
3 "treatment." the following: "However, notwithstanding  
4 the provisions of this section or another law, a minor  
5 seeking HIV-related testing shall be informed, prior  
6 to the testing, that if the results of the test are  
7 negative, the results shall remain confidential but  
8 that if the results are positive, the parent of the  
9 minor will also be informed and that another  
10 responsible adult in addition to the minor's parent  
11 may be informed upon the request of the minor."

H-5346 FILED MARCH 7, 1988 BY SHERZAN of Polk

*Advised to committee by 5007*

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1 Section 1. NEW SECTION. 135I.1 DEFINITIONS.

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

4 1. "AIDS" means acquired immune deficiency syndrome as  
5 defined by the centers for disease control of the United  
6 States department of health and human services.

7 2. "ARC" means an AIDS-related complex as defined by the  
8 centers for disease control of the United States department of  
9 health and human services.

10 3. "Department" means the Iowa department of public  
11 health.

12 4. "Health care provider" means a person providing health  
13 care services of any kind.

14 5. "Health facility" means a hospital, health care  
15 facility, clinic, blood bank, blood center, sperm bank,  
16 laboratory organ transplant centers and procurement agencies,  
17 or other health care institution.

18 6. "HIV" means the human immunodeficiency virus identified  
19 as the causative agent of AIDS.

20 7. "HIV-related test" means a test for the antibody or  
21 antigen to HIV.

22 8. "Legal guardian" means a person appointed by a court  
23 pursuant to chapter 633. In the case of a minor, "legal  
24 guardian" also means a parent or other person responsible for  
25 the care of the minor.

26 9. "Release of test results" means a written authorization  
27 for disclosure of HIV-related test results which is signed and  
28 dated, and which specifies to whom disclosure is authorized  
29 and the time period during which the release is to be  
30 effective.

31 Sec. 2. NEW SECTION. 135I.2 TESTING.

32 1. Prior to withdrawing blood for the purpose of  
33 performing an HIV-related test, the subject of the test or the  
34 subject's legal guardian shall be provided with all of the  
35 following:

1 a. An explanation of the test, including the test's  
2 purposes, potential uses, limitations, and the meaning of both  
3 positive and negative results.

4 b. An explanation of the nature of AIDS and ARC, including  
5 the relationship between the test results and the diseases.

6 c. An explanation of the procedures to be followed,  
7 including the fact that the test is entirely voluntary and can  
8 be performed anonymously if requested.

9 d. Preliminary counseling to prepare a subject for the  
10 possible emotional consequences of learning of positive test  
11 results, including the need for additional confirmatory  
12 testing.

13 e. Information concerning behavioral patterns known to  
14 expose a person to the possibility of contracting AIDS and  
15 methods for minimizing the risk of exposure.

16 2. A person seeking an HIV-related test shall have the  
17 right to remain anonymous. A health care provider shall  
18 provide for the anonymous administration of the test at the  
19 subject's request or shall confidentially refer the subject to  
20 a site which provides anonymous testing.

21 3. At any time that a subject is informed of positive test  
22 results, counseling concerning the emotional and physical  
23 health effects shall be initiated. Particular attention shall  
24 be given to explaining the need for the precautions necessary  
25 to avoid transmitting the virus. The subject shall be given  
26 information concerning additional counseling. Any additional  
27 testing that is advisable shall be explained to the subject  
28 and arrangements for the testing shall be made.

29 4. Prior to withdrawing blood for the purpose of  
30 performing an HIV-related test, the subject shall be given  
31 written notice of the provisions of this section.

32 5. Notwithstanding subsections 1 through 4, the provisions  
33 of this section do not apply to any of the following:

34 a. The performance by a health care provider or health  
35 facility of an HIV-related test when the health care provider

1 or health facility procures, processes, distributes, or uses a  
2 human body part donated for a purpose specified under the  
3 Uniform Anatomical Gift Act, or semen provided prior to July  
4 1, 1988, for the purpose of artificial insemination, or  
5 donations of blood, and such test is necessary to assure  
6 medical acceptability of such gift or semen for the purposes  
7 intended.

8 b. The performance of an HIV-related test by licensed  
9 medical personnel in medical emergencies when the subject of  
10 the test is unable to grant or withhold consent, and the test  
11 results are necessary for medical diagnostic purposes to  
12 provide appropriate emergency care or treatment, except that  
13 posttest counseling shall be required.

14 c. The performance of an HIV-related test for the purpose  
15 of research if the testing is performed in a manner by which  
16 the identity of the test subject is not known and cannot be  
17 retrieved by the researcher. An HIV-related test, the results  
18 of which could provide information which would prevent further  
19 transmission of the virus, shall not be initiated if the test  
20 would be performed in a manner by which the identity of a test  
21 subject is not known and cannot be retrieved.

22 6. A substance abuser or a sexually active individual may  
23 apply for voluntary treatment, contraceptive services, or  
24 screening or treatment for AIDS and other sexually transmitted  
25 diseases, directly to a licensed physician and surgeon, an  
26 osteopathic physician and surgeon, or a family planning  
27 clinic. Notwithstanding any other provision of law, if the  
28 person seeking the treatment is a minor who has personally  
29 made application for services, screening, or treatment, the  
30 fact that the minor sought services or is receiving services,  
31 screening, or treatment shall not be reported or disclosed,  
32 except for statistical purposes. The minor shall give written  
33 consent to receive the services, screening, or treatment.

34 Sec. 3. NEW SECTION. 135I.3 CONFIDENTIALITY OF RECORDS.

35 1. A person shall not disclose or be compelled to disclose

1 the identity of any person upon whom an HIV-related test is  
2 performed, or the results of the test in a manner which  
3 permits identification of the subject of the test, except to  
4 any of the following persons:

5 a. The subject of the test or the subject's legal  
6 guardian.

7 b. Any person who secures a written release of test  
8 results executed by the subject of the test or the subject's  
9 legal guardian.

10 c. An authorized agent or employee of a health facility or  
11 health care provider if the health facility or health care  
12 provider ordered or participated in the testing or is  
13 otherwise authorized to obtain the test results, the agent or  
14 employee provides patient care or handles or processes  
15 specimens of body fluids or tissues, and the agent or employee  
16 has a medical need to know such information.

17 d. Licensed medical personnel providing care to the  
18 subject of the test, when knowledge of the test results is  
19 necessary to provide care or treatment.

20 e. The department in accordance with reporting  
21 requirements for an HIV-related condition.

22 f. A health facility or health care provider which  
23 procures, processes, distributes, or uses a human body part  
24 from a deceased person with respect to medical information  
25 regarding that person, or semen provided prior to July 1,  
26 1988, for the purpose of artificial insemination.

27 g. A person who attends to the body of a person whose  
28 death resulted from an HIV-related condition.

29 h. A person allowed access to a record by a court order  
30 which is issued in compliance with the following provisions:

31 (1) There is a court finding that the person seeking the  
32 test results has demonstrated a compelling need for the test  
33 results which cannot be accommodated by other means. In  
34 assessing compelling need, the court shall weigh the need for  
35 disclosure against the privacy interest of the test subject

1 and the public interest which may be disserved by disclosure  
2 due to its deterrent effect on future testing or due to its  
3 effect in leading to discrimination.

4 (2) Pleadings pertaining to disclosure of test results  
5 shall substitute a pseudonym for the true name of the subject  
6 of the test. The disclosure to the parties of the subject's  
7 true name shall be communicated confidentially, in documents  
8 not filed with the court.

9 (3) Before granting an order, the court shall provide the  
10 person whose test results are in question with notice and a  
11 reasonable opportunity to participate in the proceedings if  
12 the person is not already a party.

13 (4) Court proceedings as to disclosure of test results  
14 shall be conducted in camera unless the subject of the test  
15 agrees to a hearing in open court or unless the court  
16 determines that a public hearing is necessary to the public  
17 interest and the proper administration of justice.

18 (5) Upon the issuance of an order to disclose test  
19 results, the court shall impose appropriate safeguards against  
20 unauthorized disclosure, which shall specify the persons who  
21 may gain access to the information, the purposes for which the  
22 information shall be used, and appropriate prohibitions on  
23 future disclosure.

24 2. A person to whom the results of an HIV-related test  
25 have been disclosed pursuant to subsection 1 shall not  
26 disclose the test results to another person except as  
27 authorized by subsection 1, or by a court order issued  
28 pursuant to subsection 1.

29 3. If disclosure is made pursuant to this section, the  
30 disclosure shall be accompanied by a statement in writing  
31 which includes the following or substantially similar  
32 language: "This information has been disclosed to you from  
33 records whose confidentiality is protected by state law.  
34 State law prohibits you from making any further disclosure of  
35 the information without the specific written consent of the

1 person to whom it pertains, or as otherwise permitted by law.  
2 A general authorization for the release of medical or other  
3 information is not sufficient for this purpose." An oral  
4 disclosure shall be accompanied or followed by such a notice  
5 within ten days.

6 Sec. 4. NEW SECTION. 135I.4 TEST PROHIBITED AS CONDITION  
7 OF EMPLOYMENT.

8 1. A person shall not require another person to take an  
9 HIV-related test as a condition of hiring, promotion, or  
10 continued employment unless the test is a bona fide  
11 occupational qualification for the job in question.

12 2. A person shall not fail or refuse to hire or shall not  
13 discharge another person, or segregate or classify another  
14 person in any way which would deprive or tend to deprive that  
15 person of employment opportunities or adversely affect the  
16 person's status as an employee, or otherwise discriminate  
17 against a person with respect to compensation, terms,  
18 conditions, or privileges of employment on the basis of the  
19 results of an HIV-related test unless the test is a bona fide  
20 occupational qualification for the job in question.

21 3. A person who asserts that a bona fide occupational  
22 qualification exists for HIV-related testing shall have the  
23 burden of proving both of the following:

24 a. That the HIV-related test is necessary to ascertain  
25 whether an employee is currently able to perform in a  
26 reasonable manner the duties of the particular job or whether  
27 an employee will present a significant risk of transmitting  
28 HIV infection to other persons in the course of normal work  
29 activities.

30 b. That there exists no means of reasonable accommodation  
31 short of requiring the test.

32 Sec. 5. NEW SECTION. 135I.5 DISCLOSURE OF ACQUIRED  
33 IMMUNE DEFICIENCY SYNDROME-RELATED TESTING AND TEST RESULTS --  
34 PROHIBITION.

35 A person as defined in section 507B.2, subsection 1 shall

1 not request or require an individual to take an acquired  
2 immune deficiency syndrome-related test when issuing or  
3 renewing health and accident or life insurance or providing  
4 similar health and accident benefit coverages unless the  
5 person complies with both of the following:

6 1. The person agrees not to disclose the fact of the  
7 testing or the test results except as required by law, or as  
8 authorized by the individual in writing.

9 2. The individual to be tested signs and dates a statement  
10 of agreement, which identifies the specific test or tests to  
11 be performed and which identifies the entity or entities to  
12 which disclosure is authorized.

13 Sec. 6. NEW SECTION. 135I.6 REMEDIES AND PENALTIES.

14 1. A person who violates a provision of section 135I.2,  
15 135I.3, or 135I.5, is subject to a civil penalty not to exceed  
16 one thousand dollars for each violation. Civil penalties  
17 collected pursuant to this subsection shall be forwarded to  
18 the treasurer of the state for deposit in the general fund of  
19 the state.

20 2. A person aggrieved by a violation of this chapter shall  
21 have a right of action for damages in district court.

22 3. An action under this chapter is barred unless the  
23 action is commenced within two years after the cause of action  
24 accrues.

25 4. The attorney general may maintain a civil action to  
26 enforce this chapter in which the court may order any relief  
27 authorized by subsection 2.

28 5. This chapter does not limit the rights of the subject  
29 of an HIV-related test to recover damages or other relief  
30 under any other applicable law.

31 6. This chapter shall not be construed to impose civil  
32 liability or criminal sanction for disclosure of HIV-related  
33 test results in accordance with any reporting requirement for  
34 a diagnosed case of AIDS or a related condition by the  
35 department or the centers for disease control of the United

1 States public health service.

2 Sec. 7. NEW SECTION. 135I.7 RULES ADOPTED.

3 The department shall adopt rules pursuant to chapter 17A to  
4 implement and enforce this chapter. The rules may include  
5 procedures for taking appropriate action with regard to health  
6 facilities or health care providers which violate this chapter  
7 or the rules adopted pursuant to this chapter.

8 EXPLANATION

9 The bill provides for confidentiality in testing and  
10 recordkeeping concerning human immunodeficiency virus (HIV)  
11 testing, and provides exceptions for disclosure. The bill  
12 prohibits the imposition of a requirement of HIV-related  
13 testing as a condition of employment and prohibits the refusal  
14 to hire or the discharging of a person based upon the results  
15 of an HIV-related test. The bill provides remedies for  
16 persons aggrieved by violations of provisions of the bill and  
17 provides a civil penalty for violations. The bill requires  
18 the Iowa department of public health to adopt rules to  
19 implement the new law.

20 SIMILAR TO HSB 521 (LSB 7563IS)

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HOUSE FILE 2294

H-5152

1 Amend House File 2294 as follows:

2 1. Page 8, by inserting after line 7 the  
3 following:

4 "Sec. \_\_\_\_ . NEW SECTION. 139.43 MEDICAL CARE  
5 PROVIDER -- RIGHT-TO-KNOW.

6 1. For the purposes of this section, unless the  
7 context otherwise provides:

8 a. "Medical providers" means paramedics, ambulance  
9 personnel, physicians, nurses, hospital personnel,  
10 first responders, peace officers, or firefighters who  
11 provide emergency care services to a patient.

12 b. "Significant exposure" means direct skin or  
13 mucous membrane contact with body fluids, including  
14 blood, of a person with a communicable disease.

15 2. The Iowa department of public health shall  
16 develop in accordance with section 135I.3, and  
17 hospitals shall adopt and implement a protocol for the  
18 notification of medical providers who have provided or  
19 are about to provide emergency care or services to a  
20 patient who has been diagnosed as having a  
21 communicable disease. The notification shall not  
22 include the name of the patient and a person who  
23 receives notification shall treat the information as  
24 confidential.

25 3. The Iowa department of public health shall  
26 designate by rule adopted pursuant to chapter 17A,  
27 communicable diseases for which notification is  
28 required.

29 4. A hospital shall notify a medical provider by  
30 letter within seventy-two hours of a confirmed  
31 diagnosis of a communicable disease for which  
32 notification is required with the exception of  
33 notification of a confirmed diagnosis of acquired  
34 immune deficiency syndrome. In the case of a  
35 confirmed diagnosis of acquired immune deficiency  
36 syndrome the hospital shall provide a letter of  
37 notification only if the medical provider has  
38 indicated that a reasonable possibility exists that  
39 the medical provider sustained significant exposure to  
40 the patient or if the hospital providing notification  
41 is aware of a possible significant exposure.

42 5. The notification letter shall be sent to a  
43 designated contact person at the business office of  
44 the medical provider. The letter shall state the name  
45 of the medical provider involved and the communicable  
46 disease diagnosed. However, the letter shall not  
47 contain the name of the patient. Upon receipt of the  
48 letter of notification, the designated contact person  
49 shall contact all medical providers involved in the  
50 emergency care of life support services and transport

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1 of the patient. The Iowa department of public health  
2 shall designate the form and content of the  
3 notification letter.

4 6. Upon discharge of a patient with a communicable  
5 disease, the hospital shall notify the applicable  
6 medical providers of appropriate precautions against  
7 the communicable disease, but the name of the specific  
8 disease shall not be disclosed.

9 7. A person providing or failing to provide  
10 notification under the established protocol shall have  
11 immunity, both civil and criminal, from any liability  
12 that might result by reason of any action or inaction  
13 in accordance with the protocol, unless the action or  
14 inaction is willful.

15 8. A person who willfully fails to provide the  
16 letter of notification required under this section is  
17 guilty of a simple misdemeanor. A person who commits  
18 a second or subsequent offense is guilty of a serious  
19 misdemeanor.

20 9. This section does not preclude a civil action  
21 by a medical provider against a person which fails to  
22 inform a medical provider of the receipt of a letter  
23 of notification."

Added 2/24

BY HUMMEL of Benton	RUNNING of Linn
CONNORS of Polk	BEAMAN of Clarke
BISIGNANO of Polk	PAVICH of Pottawamott
RENAUD of Polk	PLATT of Muscatine
	LUNDBY of Linn

H-5152 FILED FEBRUARY 23, 1988

*Adopted as amended by H-5152 2/27 (p. 504)*

HOUSE FILE 2294

H-5150

1 Amend House File 2294 as follows:

2 1. Page 3, line 33, by inserting after the word  
3 "treatment." the following: "However, notwithstanding  
4 the provisions of this section or another law, a minor  
5 seeking HIV-related testing shall be informed, prior  
6 to the testing, that if the results of the test are  
7 negative, the results shall remain confidential but  
8 that if the results are positive, the legal guardian  
9 of the minor will also be informed."

BY BISIGNANO of Polk	PETERS of Woodbury
CONNORS of Polk	GARMAN of Story
RENAUD of Polk	JOCHUM of Dubuque
HUMMEL of Benton	COREY of Louisa

H-5150 FILED FEBRUARY 23, 1988

*Adopted as amended by 5150 2/25 (p. 476)*

*Adopted as amended by 5175*

## HOUSE FILE 2294

H-5166

1 Amend the Amendment, H-5153, to House File 2294 as  
2 follows:

3 1. By striking page 1, lines 2 through 9, and  
4 inserting the following:

5 "\_\_\_\_\_. Page 2, lines 7 and 8, by striking the  
6 words "and can be performed anonymously if requested".  
7 \_\_\_\_\_ . Page 2, by striking lines 16 through 20."

8 2. Page 1, by inserting after line 12, the  
9 following:

10 "\_\_\_\_\_. Page 7, by inserting after line 12, the  
11 following:

12 "Sec. \_\_\_\_\_. NEW SECTION. 1351.6 HIV-RELATED TEST  
13 -- REPORTING TO DEPARTMENT.

14 1. Immediately after the testing of a person with  
15 a test result indicating human immunodeficiency virus  
16 infection which has been confirmed as positive  
17 according to prevailing medical technology, the  
18 physician or other practitioner at whose request the  
19 test was performed shall make a report to the Iowa  
20 department of public health on a form provided by the  
21 department.

22 2. Immediately after the diagnosis of a person as  
23 having acquired immune deficiency syndrome or a human  
24 immunodeficiency virus-related illness, the diagnosing  
25 physician shall make a report to the Iowa department  
26 of public health on a form provided by the department.

27 3. Immediately after the death of a person  
28 resulting from acquired immune deficiency syndrome or  
29 a human immunodeficiency virus-related illness, the  
30 attending physician shall make a report to the Iowa  
31 department of public health on a form provided by the  
32 department.

33 4. Immediately after the testing of a person with  
34 a test result indicating human immunodeficiency virus  
35 infection which has been confirmed as positive  
36 according to prevailing medical technology, the  
37 director of a blood plasma center or blood bank shall  
38 make a report to the Iowa department of public health  
39 on a form provided by the department.

40 5. Immediately after the testing of a person with  
41 a test result indicating human immunodeficiency virus  
42 infection which has been confirmed as positive  
43 according to prevailing medical technology, the  
44 director of a clinical laboratory shall make a report  
45 to the Iowa department of public health stating the  
46 person's name, if known, and the name and address of  
47 the physician or other health care practitioner  
48 requesting the test.

49 6. The forms provided by the department pursuant  
50 to subsections 1 through 4 of this section shall

H-5166

Page Two

1 contain the name, date of birth, sex, and address of  
2 the subject of the report and the name and address of  
3 the physician or other person making the report. The  
4 forms shall make provision for reporting where  
5 anonymity has been requested by the subject of the  
6 report.

7 7. Reports, information, and records submitted and  
8 maintained by the department pursuant to this section  
9 are strictly confidential medical information.

10 8. Reports, information, and records which contain  
11 the identity of persons shall be destroyed immediately  
12 after the extraction of statistical data and  
13 completion of contact identification or in no event  
14 longer than six months from the date the report,  
15 information, or record was received.

16 9. A person making a report in good faith pursuant  
17 to this section is immune from any liability, civil or  
18 criminal, which might otherwise be incurred or imposed  
19 as a result of the report.

20 Sec.         . NEW SECTION. 135I.7 PARTNER  
21 NOTIFICATION -- HIV.

22 1. The Iowa department of public health shall  
23 implement a partner notification program and contact  
24 all persons reported to have had an HIV-related test  
25 result which has been confirmed as positive according  
26 to prevailing medical technology. The department  
27 shall request information regarding the identities of  
28 all persons with whom the contacted person has had  
29 sexual relations or shared intravenous equipment  
30 during the time which is designated by the department  
31 as the incubation period of the disease.

32 2. The Iowa department of public health shall  
33 contact a person identified under subsection 1 who is  
34 likely to have been exposed to the human  
35 immunodeficiency virus infection and provide that the  
36 person is:

37 a. Informed of the risk of exposure.

38 b. Advised of the availability of testing.

39 c. Provided information concerning the nature of  
40 the disease and its means of transmission and  
41 prevention.

42 d. Offered referrals for testing, counseling, or  
43 treatment.

44 e. Encouraged to identify for counseling and human  
45 immunodeficiency virus infection testing any person  
46 with whom the person has had sexual relations or has  
47 shared intravenous equipment.

48 3. In making contact pursuant to subsection 2, the  
49 Iowa department of public health shall not disclose  
50 the identity of the person who provided the names of

1 the persons to be contacted and shall protect the  
2 confidentiality of persons contacted.

3 4. The Iowa department of public health may  
4 delegate its partner notification duties under this  
5 section to local health authorities unless the local  
6 authority refuses or neglects to conduct the contact  
7 tracing program in a manner deemed to be effective by  
8 the Iowa department of public health.

9 5. A person who violates a confidentiality  
10 requirement of subsection 1, 2, 3, or 4 is guilty of a  
11 class "D" felony.

12 6. A person contacted under this section, who  
13 reveals the name or identity of a sexual partner or  
14 another person with whom the person has shared  
15 intravenous equipment during the course of an  
16 investigation, shall not be held liable in a civil  
17 action for such revelation, unless the revelation is  
18 made falsely or with reckless disregard for the truth.

19 7. The Iowa department of public health shall  
20 maintain the confidentiality of the identity and  
21 testing status of the person making the contact  
22 disclosure and the identities of the persons  
23 contacted."

24 3. By renumbering as necessary.

H-5166 FILED FEBRUARY 24, 1988 BY VAN CAMP of Scott

*Filed not signed 2/25 (p 475)*

HOUSE FILE 2294

H-5153

Amend House File 2294 as follows:

1. Page 2, line 28, by inserting after the word "made." the following: "An HIV-related test for which the result is positive shall be reported to the Iowa department of public health in a confidential manner as established by the department. The person informing a subject of a positive test result shall encourage the subject to notify any sexual or intravenous drug partners."
2. Page 3, lines 26 and 27, by striking the words "family planning clinic" and inserting the following: "county health department".

H-5153 FILED FEBRUARY 23, 1988 BY VAN CAMP of Scott

*h-5153, 8-1-88 (of 475)*

HOUSE FILE 2294

H-5154

Amend House File 2294 as follows:

1. Page 2, line 10, by striking the word "positive".
2. Page 2, line 21, by striking the word "positive".
3. Page 3, line 33, by inserting after the word "treatment." the following: "At the time of pretest counseling for an HIV-related test, a minor shall be encouraged to be accompanied by a legal guardian."

H-5154 FILED FEBRUARY 23, 1988 BY HAMMOND of Story  
MULLINS of Kossuth

*H-5154 2/29 (of 526)*

HOUSE FILE 2294

H-5156

Amend amendment, H-5150, to House File 2294 as follows:

1. Page 1, line 9, by inserting after the word "minor" the following: ", or other responsible adult,".

H-5156 FILED FEBRUARY 24, 1988 BY HAMMOND of Story

*H-5156 2/24 (of 474)*

## HOUSE FILE 2294

H-5201

1 Amend to House File 2294 as follows:

2 1. Page 3, by inserting after line 21 the  
3 following:

4 "d. A person engaged in the business of insurance  
5 who is subject to section 505.15."

6 2. By striking page 6, line 32, through page 7,  
7 line 12."

8 3. Page 8, by inserting after line 7 the  
9 following:

10 "Sec. \_\_\_\_ . NEW SECTION. 505.16 APPLICATIONS FOR  
11 INSURANCE -- TEST RESTRICTIONS -- DUTIES OF  
12 COMMISSIONER.

13 1. A person engaged in the business of insurance  
14 shall not require a test of an individual in  
15 connection with an application for insurance for the  
16 presence of an antibody to the human immunodeficiency  
17 virus unless the individual provides a written release  
18 on a form approved by the insurance commissioner. The  
19 form shall include information regarding the purpose,  
20 content, use, and meaning of the test, disclosure of  
21 test results including information explaining the  
22 effect of releasing the information to a person  
23 engaged in the business of insurance, the purpose of  
24 which the test results may be used, and other  
25 information approved by the insurance commissioner.  
26 The form shall also authorize the person performing  
27 the test to provide the results of the test to the  
28 insurance company subject to rules of confidentiality,  
29 consistent with section 1351.3, approved by the  
30 insurance commissioner. As used in this section, "a  
31 person engaged in the business of insurance" includes  
32 hospital service corporations organized under chapter  
33 514 and health maintenance organizations subject to  
34 chapter 514B.

35 2. The insurance commissioner shall approve rules  
36 for carrying out this section including rules relating  
37 to the preparation of information to be provided  
38 before and after a test and the protection of  
39 confidentiality of personal and medical records of  
40 insurance applicants and policyholders."

41 4. By renumbering as necessary.

H-5201 FILED FEBRUARY 26, 1988 BY HAMMOND of Story

*Adopted 2/29/88*

HOUSE FILE 2294

H-5172

- 1 Amend House File 2294 as follows:
- 2 1. Page 6, by striking lines 6 through 31.
- 3 2. By renumbering as necessary.

H-5172 FILED FEBRUARY 24, 1988 BY MULLINS of Kossuth

*Adopted 2/24 (p. 566)*

HOUSE FILE 2294

H-5175

- 1 Amend amendment, H-5150, to House File 2294 as
- 2 follows:
- 3 1. Page 1, lines 8 and 9, by striking the words
- 4 "the legal guardian of the minor will also be
- 5 informed" and inserting the following: "a responsible
- 6 adult agreed to by the minor will also be informed".

H-5175 FILED FEBRUARY 25, 1988 BY JOCHUM of Dubuque

ADOPTED (p. 416)

*Adopted 2/25 (p. 416)*

HOUSE FILE 2294

H-5183

- 1 Amend the House amendment, H-5152, to House File
- 2 2294 as follows:
- 3 1. Page 1, line 14, by striking the words "a
- 4 communicable disease" and inserting the following:
- 5 "acquired immune deficiencies syndrome".
- 6 2. Page 1, lines 20 and 21, by striking the words
- 7 "a communicable disease" and inserting the following:
- 8 "acquired immune deficiency syndrome".
- 9 3. Page 1, by striking lines 25 through 28.
- 10 4. Page 1, by striking lines 29 through 34 and
- 11 inserting the following: "In the case of a".
- 12 5. Page 1, line 36, by striking the word "the"
- 13 and inserting the following: "a".
- 14 6. Page 1, line 37, by inserting after the word
- 15 "notification" the following: "to a medical
- 16 provider".
- 17 7. Page 1, lines 45 and 46, by striking the words
- 18 "and the communicable disease diagnosed".
- 19 8. Page 2, lines 4 and 5, by striking the words
- 20 "a communicable disease" and inserting the following:
- 21 "acquired immune deficiency syndrome".
- 22 9. Page 2, by striking lines 6 through 8, and
- 23 inserting the following: "medical providers of
- 24 appropriate precautions to be taken but shall not
- 25 state that the disease involved is acquired immune
- 26 deficiency syndrome."

H-5183 FILED FEBRUARY 25, 1988 BY HUMMEL of Benton

*Adopted 2/24 (p. 566)*

## HOUSE FILE 2294

H-5591

1 Amend House File 2294 as follows:

2 1. Page 3, by striking lines 32 and 33 and  
3 inserting the following: "except for statistical  
4 purposes. Notwithstanding any other provision of law,  
5 however, the minor shall be informed prior to testing  
6 that upon confirmation according to prevailing medical  
7 technology of a positive test result the minor's legal  
8 guardian is required to be informed by the testing  
9 facility. Testing facilities where minors are tested  
10 shall have available a program to assist minors and  
11 legal guardians with the notification process which  
12 emphasizes the need for family support and assists in  
13 making available the resources necessary to accomplish  
14 that goal. However, a testing facility which is  
15 precluded by federal statute, regulation, or center  
16 for disease control guidelines, from informing the  
17 legal guardian is exempt from the notification  
18 requirement, but not from the requirement for an  
19 assistance program. The minor shall give written  
20 consent to these procedures and to receive the  
21 services, screening, or treatment. Such consent is  
22 not subject to later disaffirmance by reason of  
23 minority."

24 2. Page 3, by striking line 35 and inserting the  
25 following:

26 "1. A person possessing information regulated by  
27 this chapter shall not disclose the identity of any  
28 other person upon whom an HIV-related test is  
29 performed or the results of such a test in a manner  
30 which would permit identification of another person  
31 and a person shall not be compelled to disclose".

32 3. Page 4, line 6, by inserting after the word  
33 "guardian" the following: "subject to the provisions  
34 of section 135I.2, subsection 6, when applicable".

35 4. Page 5, by inserting after line 23 the  
36 following:

37 "i. An employer, if the test is authorized to be  
38 required under any other provision of law."

39 5. Page 8, by inserting after line 7 the  
40 following:

41 "Sec. \_\_\_\_\_. The Code editor shall codify the  
42 provisions of this Act and senate file 2157 and other  
43 appropriate Acts approved by the general assembly into  
44 one chapter relating to acquired immune deficiency  
45 syndrome and shall provide appropriate divisions  
46 within that chapter".

47 6. By renumbering as necessary.

BY SHERZAN of Polk  
HAMMOND of Story

HARPER of Black Hawk  
MULLINS of Kossuth

H-5591 FILED MARCH 14, 1988

*3/17/88*

San Clemente - 3/18  
Amended for 5579, 3/25 (p. 1017)

HOUSE FILE 2294  
BY COMMITTEE ON HUMAN  
RESOURCES

(As Amended and Passed by the House March 17, 1988)

Passed House, Date 4/11/88 (p. 1061) Passed Senate, Date 4/8/88 (p. 1256)  
Vote: Ayes 89 Nays 3 Vote: Ayes 43 Nays 0  
Approved May 12, 1988

A BILL FOR

1 An Act relating to testing for and confidentiality of human  
2 immunodeficiency virus-related matters and providing  
3 penalties.

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

House Amendments \_\_\_\_\_  
Deleted Language \*

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1 Section 1. NEW SECTION. 135I.1 DEFINITIONS.

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

4 1. "AIDS" means acquired immune deficiency syndrome as  
5 defined by the centers for disease control of the United  
6 States department of health and human services.

7 2. "ARC" means an AIDS-related complex as defined by the  
8 centers for disease control of the United States department of  
9 health and human services.

10 3. "Department" means the Iowa department of public  
11 health.

12 4. "Health care provider" means a person providing health  
13 care services of any kind.

14 5. "Health facility" means a hospital, health care  
15 facility, clinic, blood bank, blood center, sperm bank,  
16 laboratory organ transplant centers and procurement agencies,  
17 or other health care institution.

18 6. "HIV" means the human immunodeficiency virus identified  
19 as the causative agent of AIDS.

20 7. "HIV-related test" means a test for the antibody or  
21 antigen to HIV.

22 8. "Legal guardian" means a person appointed by a court  
23 pursuant to chapter 633. In the case of a minor, "legal  
24 guardian" also means a parent or other person responsible for  
25 the care of the minor.

26 9. "Release of test results" means a written authorization  
27 for disclosure of HIV-related test results which is signed and  
28 dated, and which specifies to whom disclosure is authorized  
29 and the time period during which the release is to be  
30 effective.

31 Sec. 2. NEW SECTION. 135I.2 TESTING.

32 1. Prior to withdrawing blood for the purpose of  
33 performing an HIV-related test, the subject of the test or the  
34 subject's legal guardian shall be provided with all of the  
35 following:

1 a. An explanation of the test, including the test's  
2 purposes, potential uses, limitations, and the meaning of both  
3 positive and negative results.

4 b. An explanation of the nature of AIDS and ARC, including  
5 the relationship between the test results and the diseases.

6 c. An explanation of the procedures to be followed,  
7 including the fact that the test is entirely voluntary and can  
8 be performed anonymously if requested.

9 d. Preliminary counseling to prepare a subject for the  
\*10 possible emotional consequences of learning of test results,  
11 including the need for additional confirmatory testing.

12 e. Information concerning behavioral patterns known to  
13 expose a person to the possibility of contracting AIDS and  
14 methods for minimizing the risk of exposure.

15 2. A person seeking an HIV-related test shall have the  
16 right to remain anonymous. A health care provider shall  
17 provide for the anonymous administration of the test at the  
18 subject's request or shall confidentially refer the subject to  
19 a site which provides anonymous testing.

\*20 3. At any time that a subject is informed of test results,  
21 counseling concerning the emotional and physical health  
22 effects shall be initiated. Particular attention shall be  
23 given to explaining the need for the precautions necessary to  
24 avoid transmitting the virus. The subject shall be given  
25 information concerning additional counseling. Any additional  
26 testing that is advisable shall be explained to the subject  
27 and arrangements for the testing shall be made.

28 4. Prior to withdrawing blood for the purpose of  
29 performing an HIV-related test, the subject shall be given  
30 written notice of the provisions of this section.

31 5. Notwithstanding subsections 1 through 4, the provisions  
32 of this section do not apply to any of the following:

33 a. The performance by a health care provider or health  
34 facility of an HIV-related test when the health care provider  
35 or health facility procures, processes, distributes, or uses a

1 human body part donated for a purpose specified under the  
2 Uniform Anatomical Gift Act, or semen provided prior to July  
3 1, 1988, for the purpose of artificial insemination, or  
4 donations of blood, and such test is necessary to assure  
5 medical acceptability of such gift or semen for the purposes  
6 intended.

7 b. The performance of an HIV-related test by licensed  
8 medical personnel in medical emergencies when the subject of  
9 the test is unable to grant or withhold consent, and the test  
10 results are necessary for medical diagnostic purposes to  
11 provide appropriate emergency care or treatment, except that  
12 posttest counseling shall be required.

13 c. The performance of an HIV-related test for the purpose  
14 of research if the testing is performed in a manner by which  
15 the identity of the test subject is not known and cannot be  
16 retrieved by the researcher. An HIV-related test, the results  
17 of which could provide information which would prevent further  
18 transmission of the virus, shall not be initiated if the test  
19 would be performed in a manner by which the identity of a test  
20 subject is not known and cannot be retrieved.

21 d. A person engaged in the business of insurance who is  
22 subject to section 505.15.

23 6. A substance abuser or a sexually active individual may  
24 apply for voluntary treatment, contraceptive services, or  
25 screening or treatment for AIDS and other sexually transmitted  
26 diseases, directly to a licensed physician and surgeon, an  
27 osteopathic physician and surgeon, or a family planning  
28 clinic. Notwithstanding any other provision of law, if the  
29 person seeking the treatment is a minor who has personally  
30 made application for services, screening, or treatment, the  
31 fact that the minor sought services or is receiving services,  
32 screening, or treatment shall not be reported or disclosed,  
33 except for statistical purposes. Notwithstanding any other  
34 provision of law, however, the minor shall be informed prior  
35 to testing that upon confirmation according to prevailing

1 medical technology of a positive test result the minor's legal  
2 guardian is required to be informed by the testing facility.  
3 Testing facilities where minors are tested shall have  
4 available a program to assist minors and legal guardians with  
5 the notification process which emphasizes the need for family  
6 support and assists in making available the resources  
7 necessary to accomplish that goal. However, a testing  
8 facility which is precluded by federal statute, regulation, or  
9 center for disease control guidelines, from informing the  
10 legal guardian is exempt from the notification requirement,  
11 but not from the requirement for an assistance program. The  
12 minor shall give written consent to these procedures and to  
13 receive the services, screening, or treatment. Such consent  
14 is not subject to later disaffirmance by reason of minority.

15 Sec. 3. NEW SECTION. 135I.3 CONFIDENTIALITY OF RECORDS.

16 1. A person possessing information regulated by this  
17 chapter shall not disclose the identity of any other person  
18 upon whom an HIV-related test is performed or the results of  
19 such a test in a manner which would permit identification of  
20 another person and a person shall not be compelled to disclose  
21 the identity of any person upon whom an HIV-related test is  
22 performed, or the results of the test in a manner which  
23 permits identification of the subject of the test, except to  
24 any of the following persons:

25 a. The subject of the test or the subject's legal guardian  
26 subject to the provisions of section 135I.2, subsection 6,  
27 when applicable.

28 b. Any person who secures a written release of test  
29 results executed by the subject of the test or the subject's  
30 legal guardian.

31 c. An authorized agent or employee of a health facility or  
32 health care provider if the health facility or health care  
33 provider ordered or participated in the testing or is  
34 otherwise authorized to obtain the test results, the agent or  
35 employee provides patient care or handles or processes

1 specimens of body fluids or tissues, and the agent or employee  
2 has a medical need to know such information.

3 d. Licensed medical personnel providing care to the  
4 subject of the test, when knowledge of the test results is  
5 necessary to provide care or treatment.

6 e. The department in accordance with reporting  
7 requirements for an HIV-related condition.

8 f. A health facility or health care provider which  
9 procures, processes, distributes, or uses a human body part  
10 from a deceased person with respect to medical information  
11 regarding that person, or semen provided prior to July 1,  
12 1988, for the purpose of artificial insemination.

13 g. A person who attends to the body of a person whose  
14 death resulted from an HIV-related condition.

15 h. A person allowed access to a record by a court order  
16 which is issued in compliance with the following provisions:

17 (1) There is a court finding that the person seeking the  
18 test results has demonstrated a compelling need for the test  
19 results which cannot be accommodated by other means. In  
20 assessing compelling need, the court shall weigh the need for  
21 disclosure against the privacy interest of the test subject  
22 and the public interest which may be disserved by disclosure  
23 due to its deterrent effect on future testing or due to its  
24 effect in leading to discrimination.

25 (2) Pleadings pertaining to disclosure of test results  
26 shall substitute a pseudonym for the true name of the subject  
27 of the test. The disclosure to the parties of the subject's  
28 true name shall be communicated confidentially, in documents  
29 not filed with the court.

30 (3) Before granting an order, the court shall provide the  
31 person whose test results are in question with notice and a  
32 reasonable opportunity to participate in the proceedings if  
33 the person is not already a party.

34 (4) Court proceedings as to disclosure of test results  
35 shall be conducted in camera unless the subject of the test

1 agrees to a hearing in open court or unless the court  
2 determines that a public hearing is necessary to the public  
3 interest and the proper administration of justice.

4 (5) Upon the issuance of an order to disclose test  
5 results, the court shall impose appropriate safeguards against  
6 unauthorized disclosure, which shall specify the persons who  
7 may gain access to the information, the purposes for which the  
8 information shall be used, and appropriate prohibitions on  
9 future disclosure.

10 1. An employer, if the test is authorized to be required  
11 under any other provision of law.

12 2. A person to whom the results of an HIV-related test  
13 have been disclosed pursuant to subsection 1 shall not  
14 disclose the test results to another person except as  
15 authorized by subsection 1, or by a court order issued  
16 pursuant to subsection 1.

17 3. If disclosure is made pursuant to this section, the  
18 disclosure shall be accompanied by a statement in writing  
19 which includes the following or substantially similar  
20 language: "This information has been disclosed to you from  
21 records whose confidentiality is protected by state law.  
22 State law prohibits you from making any further disclosure of  
23 the information without the specific written consent of the  
24 person to whom it pertains, or as otherwise permitted by law.  
25 A general authorization for the release of medical or other  
26 information is not sufficient for this purpose." An oral  
27 disclosure shall be accompanied or followed by such a notice  
28 within ten days.

\* 29 Sec. 4. NEW SECTION. 135I.6 REMEDIES AND PENALTIES.

30 1. A person who violates a provision of section 135I.2,  
31 135I.3, or 135I.5, is subject to a civil penalty not to exceed  
32 one thousand dollars for each violation. Civil penalties  
33 collected pursuant to this subsection shall be forwarded to  
34 the treasurer of the state for deposit in the general fund of  
35 the state.

1 2. A person aggrieved by a violation of this chapter shall  
2 have a right of action for damages in district court.

3 3. An action under this chapter is barred unless the  
4 action is commenced within two years after the cause of action  
5 accrues.

6 4. The attorney general may maintain a civil action to  
7 enforce this chapter in which the court may order any relief  
8 authorized by subsection 2.

9 5. This chapter does not limit the rights of the subject  
10 of an HIV-related test to recover damages or other relief  
11 under any other applicable law.

12 6. This chapter shall not be construed to impose civil  
13 liability or criminal sanction for disclosure of HIV-related  
14 test results in accordance with any reporting requirement for  
15 a diagnosed case of AIDS or a related condition by the  
16 department or the centers for disease control of the United  
17 States public health service.

18 Sec. 5. NEW SECTION. 135I.7 RULES ADOPTED.

19 The department shall adopt rules pursuant to chapter 17A to  
20 implement and enforce this chapter. The rules may include  
21 procedures for taking appropriate action with regard to health  
22 facilities or health care providers which violate this chapter  
23 or the rules adopted pursuant to this chapter.

24 Sec. 6. NEW SECTION. 139.43 MEDICAL CARE PROVIDER --  
25 RIGHT-TO-KNOW.

26 1. For the purposes of this section, unless the context  
27 otherwise provides:

28 a. "Medical providers" means paramedics, ambulance  
29 personnel, physicians, nurses, hospital personnel, first  
30 responders, peace officers, or firefighters who provide  
31 emergency care services to a patient.

32 b. "Significant exposure" means direct skin or mucous  
33 membrane contact with body fluids, including blood, of a  
34 person with acquired immune deficiencies syndrome.

35 2. The Iowa department of public health shall develop in

2019 amendments page 1

1 accordance with section 135I.3, and hospitals shall adopt and  
2 implement a protocol for the notification of medical providers  
3 who have provided or are about to provide emergency care or  
4 services to a patient who has been diagnosed as having  
5 acquired immune deficiency syndrome. The notification shall  
6 not include the name of the patient and a person who receives  
7 notification shall treat the information as confidential. In  
8 the case of a confirmed diagnosis of acquired immune  
9 deficiency syndrome a hospital shall provide a letter of  
10 notification to a medical provider only if the medical  
11 provider has indicated that a reasonable possibility exists  
12 that the medical provider sustained significant exposure to  
13 the patient or if the hospital providing notification is aware  
14 of a possible significant exposure.

15 3. The notification letter shall be sent to a designated  
16 contact person at the business office of the medical provider.  
17 The letter shall state the name of the medical provider  
18 involved. However, the letter shall not contain the name of  
19 the patient. Upon receipt of the letter of notification, the  
20 designated contact person shall contact all medical providers  
21 involved in the emergency care of life support services and  
22 transport of the patient. The Iowa department of public  
23 health shall designate the form and content of the  
24 notification letter.

25 4. Upon discharge of a patient with acquired immune  
26 deficiency syndrome, the hospital shall notify the applicable  
27 medical providers of appropriate precautions to be taken but  
28 shall not state that the disease involved is acquired immune  
29 deficiency syndrome.

30 5. A person providing or failing to provide notification  
31 under the established protocol shall have immunity, both civil  
32 and criminal, from any liability that might result by reason  
33 of any action or inaction in accordance with the protocol,  
34 unless the action or inaction is willful.

35 6. A person who willfully fails to provide the letter of

1 notification required under this section is guilty of a simple  
2 misdemeanor. A person who commits a second or subsequent  
3 offense is guilty of a serious misdemeanor.

4 7. This section does not preclude a civil action by a  
5 medical provider against a person which fails to inform a  
6 medical provider of the receipt of a letter of notification.

7 Sec. 7. NEW SECTION. 505.16 APPLICATIONS FOR INSURANCE -  
8 - TEST RESTRICTIONS -- DUTIES OF COMMISSIONER.

9 1. A person engaged in the business of insurance shall not  
10 require a test of an individual in connection with an  
11 application for insurance for the presence of an antibody to  
12 the human immunodeficiency virus unless the individual  
13 provides a written release on a form approved by the insurance  
14 commissioner. The form shall include information regarding  
15 the purpose, content, use, and meaning of the test, disclosure  
16 of test results including information explaining the effect of  
17 releasing the information to a person engaged in the business  
18 of insurance, the purpose of which the test results may be  
19 used, and other information approved by the insurance  
20 commissioner. The form shall also authorize the person  
21 performing the test to provide the results of the test to the  
22 insurance company subject to rules of confidentiality,  
23 consistent with section 135I.3, approved by the insurance  
24 commissioner. As used in this section, "a person engaged in  
25 the business of insurance" includes hospital service  
26 corporations organized under chapter 514 and health  
27 maintenance organizations subject to chapter 514B.

28 2. The insurance commissioner shall approve rules for  
29 carrying out this section including rules relating to the  
30 preparation of information to be provided before and after a  
31 test and the protection of confidentiality of personal and  
32 medical records of insurance applicants and policyholders.

33 Sec. 8. The Code editor shall codify the provisions of  
34 this Act and senate file 2157 and other appropriate Acts  
35 approved by the general assembly into one chapter relating to

1 acquired immune deficiency syndrome and shall provide  
2 appropriate divisions within that chapter.

3 SIMILAR TO RSB 521 (LSB 7563IS)  
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HOUSE FILE 2294

579

1 Amend House File 2294, as amended, passed, and re-  
2 printed by the House, as follows:

3 1. Page 1, by striking line 34, and inserting the  
4 following: "subject's legal guardian, except when the  
5 provisions of section 135I.2, subsection 6, apply,  
6 shall be provided with preliminary counseling which  
7 shall include but is not limited to the".

8 2. Page 2, by striking lines 9 through 11.

9 3. Page 3, by striking lines 13 through 20.

10 4. Page 3, line 22, by striking the figure  
11 "505.15" and inserting the following: "505.16".

12 5. Page 3, by striking line 23 and inserting the  
13 following:

14 "6. A person may".

15 6. Page 5, by striking lines 13 and 14.

16 7. Page 7, by striking lines 7 and 8, and insert-  
17 ing the following: "enforce this chapter."

18 8. By striking page 7, line 24 through page 9,  
19 line 6, and inserting the following:

20 "The department, in cooperation with the department  
21 of public safety, and persons who represent those who  
22 attend dead bodies shall establish for all emergency  
23 medical providers including paramedics, ambulance  
24 personnel, physicians, nurses, hospital personnel,  
25 first responders, peace officers, or firefighters, who  
26 provide emergency care services to a person, and shall  
27 establish for all persons who attend dead bodies,  
28 protocol, and procedures for the use of universal  
29 precautions to prevent the transmission of contagious  
30 and infectious diseases."

31 9. Page 9, line 33, by inserting after the word  
32 "shall" the following: ", as appropriate,".

33 10. Page 9, line 34, by inserting after the word  
34 "Act" the following: ", with the exception of section  
35 7 of this Act,".

36 11. Page 10, by inserting after line 2, the  
37 following:

38 "Sec. \_\_\_\_\_. Section 135C.23, subsection 2, Code  
39 Supplement 1987, is amended to read as follows:

40 2. A health care facility shall not knowingly  
41 admit or retain a resident:

42 a. Who is dangerous to the resident or other  
43 residents.

44 b. Who is in an acute stage of alcoholism, drug  
45 addiction, or mental illness, ~~or an active state of~~  
46 ~~communicable disease.~~

47 c. Whose condition or conduct is such that the  
resident would be unduly disturbing to other  
residents.

50 d. Who is in need of medical procedures, as

S-5579 Page 2

1 determined by a physician, or services which cannot be  
2 or are not being carried out in the facility.

3 This section does not prohibit the admission of a  
4 patient with a history of dangerous or disturbing  
5 behavior to an intermediate care facility, skilled  
6 nursing facility, or county care facility when the  
7 intermediate care facility, skilled nursing facility,  
8 or county care facility has a program which has  
9 received prior approval from the department to  
10 properly care for and manage the patient. An  
11 intermediate care facility, skilled nursing facility,  
12 or county care facility is required to transfer or  
13 discharge a resident with dangerous or disturbing  
14 behavior when the intermediate care facility, skilled  
15 nursing facility, or county care facility cannot  
16 control the resident's dangerous or disturbing  
17 behavior. The department, in coordination with the  
18 state mental health and mental retardation commission,  
19 shall adopt rules pursuant to chapter 17A for programs  
20 to be required in intermediate care facilities,  
21 skilled nursing facilities, and county care facilities  
22 that admit patients or have residents with histories  
23 of dangerous or disturbing behavior.

24 The denial of admission of a person to a health  
25 care facility shall not be based upon the patient's  
26 condition, which is the existence of a specific  
27 disease in the patient, but the decision to accept or  
28 deny admission of a patient with a specific disease  
29 shall be based solely upon the ability of the health  
30 care facility to provide the level of care required by  
31 the patient."

S-5579

Filed March 25, 1988

*Adopted 3/30 (p. 1128)*

BY COMMITTEE ON HUMAN RESOURCES  
BEVERLY HANNON, Chairperson

HOUSE FILE 2294

S-5811

1 Amend House File 2294, as amended, passed, and  
2 reprinted by the House, as follows:

3 1. Page 9, by inserting after line 6 the  
4 following:

5 "Sec. \_\_\_\_ . NEW SECTION. 246.515 HUMAN  
6 IMMUNODEFICIENCY VIRUS-RELATED MATTERS -- EXEMPTION.

7 The provision of chapters 135H and 135I relating to  
8 knowledge and consent do not apply to persons  
9 committed to the custody of the department. The  
10 department may provide for medically acceptable  
11 procedures to inform employees, visitors, and persons  
12 committed to the department of possible infection and  
13 to protect them from possible infection."  
14 2. By renumbering as necessary.

S-5811

Filed April 6, 1988

BY AL STURGEON

*Adapted 4/10 (p. 1350)*

HOUSE FILE 2294

S-5673

- 1 Amend House File 2294 as amended, passed, and  
2 reprinted by the House, as follows:  
3 1. Page 9, by inserting after line 6, the  
4 following:  
5 "Sec. \_\_\_\_ . NEW SECTION. 246.515  
6 The director shall establish, by rule, a program  
7 for the provision of prophylactics to offenders  
8 committed under law to any institution under the  
9 chapter, with the exceptions of correctional release  
10 centers and rehabilitation camps."

S-5673

Filed March 30, 1988 WITHDRAWN BY LARRY MURPHY  
(p. 1168)

HOUSE FILE 2294

S-5698

- 1 Amend House File 2294 as amended, passed, and  
2 reprinted by the House as follows:  
3 1. Page 6, by striking lines 10 and 11.

S-5698

Filed March 30, 1988 BY TOM MANN, Jr.  
*Last 4/8 (p. 1356)*

HOUSE FILE 2294

S-5752

- 1 Amend House File 2294 as amended, passed, and  
2 reprinted by the House, as follows:  
3 1. Page 7, by inserting after line 23, the  
4 following:  
5 "The department shall adopt rules pursuant to  
6 chapter 17A which require that if a health care  
7 provider attending a person prior to the person's  
8 death determines that the person suffered from or was  
9 suspected of suffering from a contagious or infectious  
10 disease, the health care provider shall place with the  
11 remains written notification of the condition for the  
12 information of any person handling the body of the  
13 deceased person subsequent to the person's death."

S-5752

Filed April 4, 1988

*Adopted 4/8 (p. 1356)*

BY BERL E. PRIEBE  
DON E. GETTINGS  
JOHN E. SOORHOLTZ  
EMIL J. HUSAK  
DALE L. TIEDEN  
EUGENE FRAISE

## SENATE AMENDMENT TO HOUSE FILE 2294

H-6344

1 Amend House File 2294, as amended, passed, and  
2 reprinted by the House, as follows:

3 1. Page 1, by striking line 34, and inserting the  
4 following: "subject's legal guardian, except when the  
5 provisions of section 135I.2, subsection 6, apply,  
6 shall be provided with preliminary counseling which  
7 shall include but is not limited to the".

8 2. Page 2, by striking lines 9 through 11.

9 3. Page 3, by striking lines 13 through 20.

10 4. Page 3, line 22, by striking the figure  
11 "505.15" and inserting the following: "505.16".

12 5. Page 3, by striking line 23 and inserting the  
13 following:

14 "6. A person may".

15 6. Page 5, by striking lines 13 and 14.

16 7. Page 7, by striking lines 7 and 8, and insert-  
17 ing the following: "enforce this chapter."

18 8. Page 7, by inserting after line 23, the  
19 following:

20 "The department shall adopt rules pursuant to  
21 chapter 17A which require that if a health care  
22 provider attending a person prior to the person's  
23 death determines that the person suffered from or was  
24 suspected of suffering from a contagious or infectious  
25 disease, the health care provider shall place with the  
26 remains written notification of the condition for the  
27 information of any person handling the body of the  
28 deceased person subsequent to the person's death."

29 9. By striking page 7, line 24 through page 9,  
30 line 6, and inserting the following:

31 "The department, in cooperation with the department  
32 of public safety, and persons who represent those who  
33 attend dead bodies shall establish for all emergency  
34 medical providers including paramedics, ambulance  
35 personnel, physicians, nurses, hospital personnel,  
36 first responders, peace officers, or firefighters, who  
37 provide emergency care services to a person, and shall  
38 establish for all persons who attend dead bodies,  
39 protocol, and procedures for the use of universal  
40 precautions to prevent the transmission of contagious  
41 and infectious diseases."

42 10. Page 9, by inserting after line 6 the  
43 following:

44 "Sec. \_\_\_\_ . NEW SECTION. 246.515 HUMAN  
45 IMMUNODEFICIENCY VIRUS-RELATED MATTERS -- EXEMPTION.

46 The provision of chapters 135H and 135I relating to  
47 knowledge and consent do not apply to persons  
48 committed to the custody of the department. The  
49 department may provide for medically acceptable  
50 procedures to inform employees, visitors, and persons

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Page 2

1 committed to the department of possible infection and  
2 to protect them from possible infection."

3 11. Page 9, line 33, by inserting after the word  
4 "shall" the following: ", as appropriate,".

5 12. Page 9, line 34, by inserting after the word  
6 "Act" the following: ", with the exception of section  
7 7 of this Act,".

8 13. Page 10, by inserting after line 2, the  
9 following:

10 "Sec. \_\_\_\_ . Section 135C.23, subsection 2, Code  
11 Supplement 1987, is amended to read as follows:

12 2. A health care facility shall not knowingly  
13 admit or retain a resident:

14 a. Who is dangerous to the resident or other  
15 residents.

16 b. Who is in an acute stage of alcoholism, drug  
17 addiction, or mental illness, ~~or an active state of~~  
18 ~~communicable disease.~~

19 c. Whose condition or conduct is such that the  
20 resident would be unduly disturbing to other  
21 residents.

22 d. Who is in need of medical procedures, as  
23 determined by a physician, or services which cannot be  
24 or are not being carried out in the facility.

25 This section does not prohibit the admission of a  
26 patient with a history of dangerous or disturbing  
27 behavior to an intermediate care facility, skilled  
28 nursing facility, or county care facility when the  
29 intermediate care facility, skilled nursing facility,  
30 or county care facility has a program which has  
31 received prior approval from the department to  
32 properly care for and manage the patient. An  
33 intermediate care facility, skilled nursing facility,  
34 or county care facility is required to transfer or  
35 discharge a resident with dangerous or disturbing  
36 behavior when the intermediate care facility, skilled  
37 nursing facility, or county care facility cannot  
38 control the resident's dangerous or disturbing  
39 behavior. The department, in coordination with the  
40 state mental health and mental retardation commission,  
41 shall adopt rules pursuant to chapter 17A for programs  
42 to be required in intermediate care facilities,  
43 skilled nursing facilities, and county care facilities  
44 that admit patients or have residents with histories  
45 of dangerous or disturbing behavior.

46 The denial of admission of a person to a health  
47 care facility shall not be based upon the patient's  
48 condition, which is the existence of a specific  
49 disease in the patient, but the decision to accept or  
50 deny admission of a patient with a specific disease

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Page 3

1 shall be based solely upon the ability of the health  
2 care facility to provide the level of care required by  
3 the patient."

4 14. By renumbering, relettering, or redesignating  
5 and correcting internal references as necessary.

RECEIVED FROM THE SENATE

H-6344 FILED APRIL 8, 1988

*House received 4/11 (p. 1661)*

Health Care

Hammond, Chair  
Norrgard  
Teaford  
Harper  
Mullins  
Hester  
Herman

NSB 521

HUMAN RESOURCES

HOUSE FILE \_\_\_\_\_ 2294  
BY (PROPOSED AIDS TASK  
FORCE BILL)

House Study Bill 521

Human Resources: Hammond, Chair; Harper, Hermann, Hester, Mullins, Norrgard and  
Teaford.

Passed House, Date \_\_\_\_\_

Passed Senate, Date \_\_\_\_\_

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to confidentiality of human immunodeficiency  
2 virus-related matters and providing penalties.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. 135I.1 DEFINITIONS.

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

4 1. "AIDS" means acquired immune deficiency syndrome.

5 2. "ARC" means AIDS-related complex.

6 3. "Department" means the Iowa department of public  
7 health.

8 4. "Health care provider" means a person providing health  
9 care services of any kind.

10 5. "Health facility" means a hospital, health care  
11 facility, clinic, blood bank, blood center, sperm bank,  
12 laboratory, or other health care institution.

13 6. "HIV" means the human immunodeficiency virus identified  
14 as the causative agent of AIDS.

15 7. "HIV-related test" means a test for the antibody or  
16 antigen to HIV.

17 8. "Legal guardian" means a person appointed by a court to  
18 assume legal authority for another who has been found  
19 incompetent or, in the case of a minor, a person who has legal  
20 custody of the minor.

21 9. "Release of test results" means a written authorization  
22 for disclosure of HIV-related test results which is signed and  
23 dated, and which specifies to whom disclosure is authorized  
24 and the time period during which the release is to be  
25 effective.

26 Sec. 2. NEW SECTION. 135I.2 TESTING.

27 1. A person shall not perform an HIV-related test without  
28 first receiving the written, informed consent of the subject  
29 of the test or the subject's legal guardian. A health care  
30 provider shall certify that informed consent has been received  
31 prior to ordering testing by a laboratory or other health  
32 facility.

33 2. Written informed consent to an HIV-related test shall  
34 consist of an agreement in writing executed by the subject of  
35 the test or the subject's legal guardian without undue

1 inducement or any element of compulsion, fraud, deceit,  
2 duress, or other form of constraint or coercion, which  
3 includes but is not limited to all of the following:

4 a. An explanation of the test, including its purpose,  
5 potential uses, limitations, and the meaning of its results.

6 b. An explanation of the procedures to be followed,  
7 including that the test is voluntary, that consent may be  
8 withdrawn at any time, and that the test can be obtained  
9 anonymously if the subject wishes.

10 3. Prior to executing an informed consent agreement, the  
11 subject of the test or the subject's legal guardian shall  
12 receive all of the following:

13 a. An explanation of the nature of AIDS and ARC and the  
14 relationship between the test results and the diseases.

15 b. Information about behaviors known to pose risks for  
16 transmission of HIV infection.

17 c. Counseling for coping with the emotional consequences  
18 of learning the test results.

19 4. A person seeking an HIV-related test who wishes to  
20 remain anonymous shall have the right to do so, and to provide  
21 written, informed consent through use of a coded system with  
22 no linking of individual identity to the test request or  
23 results. A health care provider which does not provide HIV-  
24 related tests on an anonymous basis shall refer such a person  
25 to a test site which does provide anonymous testing.

26 5. At the time of learning the test results, the subject  
27 of the test shall be provided with counseling or referrals for  
28 counseling for coping with the emotional consequences of  
29 learning the test results.

30 6. Notwithstanding subsection 1, the provisions of this  
31 section do not apply to any of the following:

32 a. The performance by a health care provider or health  
33 facility of an HIV-related test when the health care provider  
34 or health facility procures, processes, distributes, or uses a  
35 human body part donated for a purpose specified under the

1 Uniform Anatomical Gift Act, or semen provided prior to July  
2 1, 1988, for the purpose of artificial insemination, and such  
3 test is necessary to assure medical acceptability of such gift  
4 or semen for the purposes intended.

5 b. The performance of an HIV-related test by licensed  
6 medical personnel in medical emergencies when the subject of  
7 the test is unable to grant or withhold consent, and the test  
8 results are necessary for medical diagnostic purposes to  
9 provide appropriate emergency care or treatment, except that  
10 posttest counseling shall be required.

11 c. The performance of an HIV-related test for the purpose  
12 of research if the testing is performed in a manner by which  
13 the identity of the test subject is not known and cannot be  
14 retrieved by the researcher.

15 7. Notwithstanding any other provision of law, a person  
16 twelve years of age or older may consent or refuse to consent  
17 to be a subject of an HIV-related test and to counseling  
18 relevant to the test. The consent or refusal of such a person  
19 shall be valid and binding as if the person were an adult, and  
20 shall not be voidable or subject to later disaffirmance  
21 because of the person's age.

22 Sec. 3. NEW SECTION. 135I.3 CONFIDENTIALITY OF RECORDS.

23 1. A person shall not disclose or be compelled to disclose  
24 the identity of any person upon whom an HIV-related test is  
25 performed, or the results of the test in a manner which  
26 permits identification of the subject of the test, except to  
27 any of the following persons:

28 a. The subject of the test or the subject's legal  
29 guardian.

30 b. Any person who secures a legally effective release of  
31 test results executed by the subject of the test or the  
32 subject's legal guardian.

33 c. An authorized agent or employee of a health facility or  
34 health care provider if the health facility or health care  
35 provider itself is authorized to obtain the test results, the

1 agent or employee provides patient care or handles or  
2 processes specimens of body fluids or tissues, and the agent  
3 or employee has a medical need to know such information.

4 d. Licensed medical personnel providing care to the  
5 subject of the test, when knowledge of the test results is  
6 necessary to provide appropriate emergency care or treatment.

7 e. The department or the centers for disease control of  
8 the United States public health service in accordance with  
9 reporting requirements for a diagnosed case of AIDS or a  
10 related condition.

11 f. A health facility or health care provider which  
12 procures, processes, distributes, or uses a human body part  
13 from a deceased person with respect to medical information  
14 regarding that person, or semen provided prior to July 1,  
15 1988, for the purpose of artificial insemination.

16 g. Health facility staff committees or accreditation or  
17 oversight review organizations which are conducting program  
18 monitoring, program evaluation, or service reviews.

19 h. A person allowed access to a record by a court order  
20 which is issued in compliance with the following provisions:

21 (1) A court shall not issue such an order unless the court  
22 finds that the person seeking the test results has  
23 demonstrated a compelling need for the test results which  
24 cannot be accommodated by other means. In assessing  
25 compelling need, the court shall weigh the need for disclosure  
26 against the privacy interest of the test subject and the  
27 public interest which may be disserved by disclosure due to  
28 its deterrent effect on future testing or due to its effect in  
29 leading to discrimination.

30 (2) Pleadings pertaining to disclosure of test results  
31 shall substitute a pseudonym for the true name of the subject  
32 of the test. The disclosure to the parties of the subject's  
33 true name shall be communicated confidentially, in documents  
34 not filed with the court.

35 (3) Before granting an order, the court shall provide the

1 person whose test results are in question with notice and a  
2 reasonable opportunity to participate in the proceedings if  
3 the person is not already a party.

4 (4) Court proceedings as to disclosure of test results  
5 shall be conducted in camera unless the subject of the test  
6 agrees to a hearing in open court or unless the court  
7 determines that a public hearing is necessary to the public  
8 interest and the proper administration of justice.

9 (5) Upon the issuance of an order to disclose test  
10 results, the court shall impose appropriate safeguards against  
11 unauthorized disclosure, which shall specify the persons who  
12 may gain access to the information, the purposes for which the  
13 information shall be used, and appropriate prohibitions on  
14 future disclosure.

15 2. A person to whom the results of an HIV-related test  
16 have been disclosed pursuant to subsection 1 shall not  
17 disclose the test results to another person except as  
18 authorized by subsection 1.

19 3. If disclosure is made pursuant to this section, the  
20 disclosure shall be accompanied by a statement in writing  
21 which includes the following or substantially similar  
22 language: "This information has been disclosed to you from  
23 records whose confidentiality is protected by state law.  
24 State law prohibits you from making any further disclosure of  
25 the information without the specific written consent of the  
26 person to whom it pertains, or as otherwise permitted by law.  
27 A general authorization for the release of medical or other  
28 information is not sufficient for this purpose." An oral  
29 disclosure shall be accompanied or followed by such a notice  
30 within ten days.

31 Sec. 4. NEW SECTION. 135I.4 TEST PROHIBITED AS CONDITION  
32 OF EMPLOYMENT.

33 1. A person shall not require another person to take an  
34 HIV-related test as a condition of hiring, promotion, or  
35 continued employment unless the test is a bona fide

1 occupational qualification for the job in question.

2 2. A person shall not fail or refuse to hire or shall not  
3 discharge another person, or segregate or classify another  
4 person in any way which would deprive or tend to deprive that  
5 person of employment opportunities or adversely affect the  
6 person's status as an employee, or otherwise discriminate  
7 against a person with respect to compensation, terms,  
8 conditions, or privileges of employment on the basis of the  
9 results of an HIV-related test unless the test is a bona fide  
10 occupational qualification for the job in question.

11 3. A person who asserts that a bona fide occupational  
12 qualification exists for HIV-related testing shall have the  
13 burden of proving both of the following:

14 a. That the HIV-related test is necessary to ascertain  
15 whether an employee is currently able to perform in a  
16 reasonable manner the duties of the particular job or whether  
17 an employee will present a significant risk of transmitting  
18 HIV infection to other persons in the course of normal work  
19 activities.

20 b. That there exists no means of reasonable accommodation  
21 short of requiring the test.

22 Sec. 5. NEW SECTION. 135I.5 REMEDIES AND PENALTIES.

23 1. An intentional or reckless violation of section 135I.2  
24 or 135I.3 constitutes a serious misdemeanor.

25 2. A person aggrieved by a violation of this chapter shall  
26 have a right of action in district court and may recover for  
27 each violation any or all of the following:

28 a. Against a person who negligently violates a provision  
29 of this chapter, liquidated damages of one thousand dollars or  
30 actual damages, whichever is greater.

31 b. Against a person who intentionally or recklessly  
32 violates a provision of this chapter, liquidated damages of  
33 five thousand dollars or actual damages, whichever is greater.

34 c. Reasonable attorney fees.

35 d. Other relief, including an injunction, as the court may

1 deem appropriate.

2 3. An action under this chapter is barred unless the  
3 action is commenced within three years after the cause of  
4 action accrues.

5 4. The attorney general may maintain a civil action to  
6 enforce this chapter in which the court may order any relief  
7 authorized by subsection 2.

8 5. This chapter does not limit the rights of the subject  
9 of an HIV-related test to recover damages or other relief  
10 under any other applicable law.

11 6. This chapter shall not be construed to impose civil  
12 liability or criminal sanction for disclosure of HIV-related  
13 test results in accordance with any reporting requirement for  
14 a diagnosed case of AIDS or a related condition by the  
15 department or the centers for disease control of the United  
16 States public health service.

17 Sec. 6. NEW SECTION. 135I.6 RULES ADOPTED.

18 The department shall adopt rules pursuant to chapter 17A to  
19 implement and enforce this chapter. The rules may include  
20 procedures for taking appropriate action with regard to health  
21 facilities or health care providers which violate this chapter  
22 or the rules adopted pursuant to this chapter.

23 EXPLANATION

24 This bill provides for confidentiality in testing and  
25 recordkeeping concerning human immunodeficiency virus (HIV)  
26 testing, and provides exceptions for disclosure. The bill  
27 prohibits the imposition of a requirement of HIV-related  
28 testing as a condition of employment and prohibits the refusal  
29 to hire or discharging of a person based upon the results of  
30 an HIV-related test. The bill provides remedies for persons  
31 aggrieved by violations of the provisions of the bill and  
32 provides certain criminal penalties for violations. The bill  
33 requires the Iowa department of public health to adopt rules  
34 to implement the new law.

35 COMPANION TO LSB 7684SI

LSB 7563IS 72

pf/sc/14

HOUSE FILE 2294

AN ACT

RELATING TO TESTING FOR AND CONFIDENTIALITY OF HUMAN IMMUNODEFICIENCY VIRUS-RELATED MATTERS AND PROVIDING PENALTIES.

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

Section 1. NEW SECTION. 135I.1 DEFINITIONS.

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

1. "AIDS" means acquired immune deficiency syndrome as defined by the centers for disease control of the United States department of health and human services.
2. "ARC" means an AIDS-related complex as defined by the centers for disease control of the United States department of health and human services.
3. "Department" means the Iowa department of public health.
4. "Health care provider" means a person providing health care services of any kind.
5. "Health facility" means a hospital, health care facility, clinic, blood bank, blood center, sperm bank, laboratory organ transplant centers and procurement agencies, or other health care institution.
6. "HIV" means the human immunodeficiency virus identified as the causative agent of AIDS.
7. "HIV-related test" means a test for the antibody or antigen to HIV.
8. "Legal guardian" means a person appointed by a court pursuant to chapter 633. In the case of a minor, "legal guardian" also means a parent or other person responsible for the care of the minor.
9. "Release of test results" means a written authorization for disclosure of HIV-related test results which is signed and

dated, and which specifies to whom disclosure is authorized and the time period during which the release is to be effective.

Sec. 2. NEW SECTION. 135I.2 TESTING.

1. Prior to withdrawing blood for the purpose of performing an HIV-related test, the subject of the test or the subject's legal guardian, except when the provisions of section 135I.2, subsection 6, apply, shall be provided with preliminary counseling which shall include but is not limited to the following:

- a. An explanation of the test, including the test's purposes, potential uses, limitations, and the meaning of both positive and negative results.
- b. An explanation of the nature of AIDS and ARC, including the relationship between the test results and the diseases.
- c. An explanation of the procedures to be followed, including the fact that the test is entirely voluntary and can be performed anonymously if requested.
- d. Information concerning behavioral patterns known to expose a person to the possibility of contracting AIDS and methods for minimizing the risk of exposure.

2. A person seeking an HIV-related test shall have the right to remain anonymous. A health care provider shall provide for the anonymous administration of the test at the subject's request or shall confidentially refer the subject to a site which provides anonymous testing.

3. At any time that a subject is informed of test results, counseling concerning the emotional and physical health effects shall be initiated. Particular attention shall be given to explaining the need for the precautions necessary to avoid transmitting the virus. The subject shall be given information concerning additional counseling. Any additional testing that is advisable shall be explained to the subject and arrangements for the testing shall be made.

4. Prior to withdrawing blood for the purpose of performing an HIV-related test, the subject shall be given written notice of the provisions of this section.

5. Notwithstanding subsections 1 through 4, the provisions of this section do not apply to any of the following:

a. The performance by a health care provider or health facility of an HIV-related test when the health care provider or health facility procures, processes, distributes, or uses a human body part donated for a purpose specified under the Uniform Anatomical Gift Act, or semen provided prior to July 1, 1988, for the purpose of artificial insemination, or donations of blood, and such test is necessary to assure medical acceptability of such gift or semen for the purposes intended.

b. The performance of an HIV-related test by licensed medical personnel in medical emergencies when the subject of the test is unable to grant or withhold consent, and the test results are necessary for medical diagnostic purposes to provide appropriate emergency care or treatment, except that posttest counseling shall be required.

c. A person engaged in the business of insurance who is subject to section 505.16.

6. A person may apply for voluntary treatment, contraceptive services, or screening or treatment for AIDS and other sexually transmitted diseases, directly to a licensed physician and surgeon, an osteopathic physician and surgeon, or a family planning clinic. Notwithstanding any other provision of law, if the person seeking the treatment is a minor who has personally made application for services, screening, or treatment, the fact that the minor sought services or is receiving services, screening, or treatment shall not be reported or disclosed, except for statistical purposes. Notwithstanding any other provision of law, however, the minor shall be informed prior to testing that upon confirmation according to prevailing medical technology

of a positive test result the minor's legal guardian is required to be informed by the testing facility. Testing facilities where minors are tested shall have available a program to assist minors and legal guardians with the notification process which emphasizes the need for family support and assists in making available the resources necessary to accomplish that goal. However, a testing facility which is precluded by federal statute, regulation, or center for disease control guidelines, from informing the legal guardian is exempt from the notification requirement, but not from the requirement for an assistance program. The minor shall give written consent to these procedures and to receive the services, screening, or treatment. Such consent is not subject to later disaffirmance by reason of minority.

Sec. 3. NEW SECTION. 135I.3 CONFIDENTIALITY OF RECORDS.

1. A person possessing information regulated by this chapter shall not disclose the identity of any other person upon whom an HIV-related test is performed or the results of such a test in a manner which would permit identification of another person and a person shall not be compelled to disclose the identity of any person upon whom an HIV-related test is performed, or the results of the test in a manner which permits identification of the subject of the test, except to any of the following persons:

a. The subject of the test or the subject's legal guardian subject to the provisions of section 135I.2, subsection 6, when applicable.

b. Any person who secures a written release of test results executed by the subject of the test or the subject's legal guardian.

c. An authorized agent or employee of a health facility or health care provider if the health facility or health care provider ordered or participated in the testing or is otherwise authorized to obtain the test results, the agent or employee provides patient care or handles or processes

specimens of body fluids or tissues, and the agent or employee has a medical need to know such information.

d. Licensed medical personnel providing care to the subject of the test, when knowledge of the test results is necessary to provide care or treatment.

e. The department in accordance with reporting requirements for an HIV-related condition.

f. A health facility or health care provider which procures, processes, distributes, or uses a human body part from a deceased person with respect to medical information regarding that person, or semen provided prior to July 1, 1988, for the purpose of artificial insemination.

g. A person allowed access to a record by a court order which is issued in compliance with the following provisions:

(1) There is a court finding that the person seeking the test results has demonstrated a compelling need for the test results which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for disclosure against the privacy interest of the test subject and the public interest which may be disserved by disclosure due to its deterrent effect on future testing or due to its effect in leading to discrimination.

(2) Pleadings pertaining to disclosure of test results shall substitute a pseudonym for the true name of the subject of the test. The disclosure to the parties of the subject's true name shall be communicated confidentially, in documents not filed with the court.

(3) Before granting an order, the court shall provide the person whose test results are in question with notice and a reasonable opportunity to participate in the proceedings if the person is not already a party.

(4) Court proceedings as to disclosure of test results shall be conducted in camera unless the subject of the test agrees to a hearing in open court or unless the court determines that a public hearing is necessary to the public interest and the proper administration of justice.

(5) Upon the issuance of an order to disclose test results, the court shall impose appropriate safeguards against unauthorized disclosure, which shall specify the persons who may gain access to the information, the purposes for which the information shall be used, and appropriate prohibitions on future disclosure.

h. An employer, if the test is authorized to be required under any other provision of law.

2. A person to whom the results of an HIV-related test have been disclosed pursuant to subsection 1 shall not disclose the test results to another person except as authorized by subsection 1, or by a court order issued pursuant to subsection 1.

3. If disclosure is made pursuant to this section, the disclosure shall be accompanied by a statement in writing which includes the following or substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of the information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. A general authorization for the release of medical or other information is not sufficient for this purpose." An oral disclosure shall be accompanied or followed by such a notice within ten days.

Sec. 4. NEW SECTION. 135I.4 REMEDIES AND PENALTIES.

1. A person who violates a provision of section 135I.2 or 135I.3, is subject to a civil penalty not to exceed one thousand dollars for each violation. Civil penalties collected pursuant to this subsection shall be forwarded to the treasurer of the state for deposit in the general fund of the state.

2. A person aggrieved by a violation of this chapter shall have a right of action for damages in district court.

3. An action under this chapter is barred unless the action is commenced within two years after the cause of action accrues.

4. The attorney general may maintain a civil action to enforce this chapter.

5. This chapter does not limit the rights of the subject of an HIV-related test to recover damages or other relief under any other applicable law.

6. This chapter shall not be construed to impose civil liability or criminal sanction for disclosure of HIV-related test results in accordance with any reporting requirement for a diagnosed case of AIDS or a related condition by the department or the centers for disease control of the United States public health service.

Sec. 5. NEW SECTION. 135I.5 RULES ADOPTED.

The department shall adopt rules pursuant to chapter 17A to implement and enforce this chapter. The rules may include procedures for taking appropriate action with regard to health facilities or health care providers which violate this chapter or the rules adopted pursuant to this chapter.

The department shall adopt rules pursuant to chapter 17A which require that if a health care provider attending a person prior to the person's death determines that the person suffered from or was suspected of suffering from a contagious or infectious disease, the health care provider shall place with the remains written notification of the condition for the information of any person handling the body of the deceased person subsequent to the person's death.

The department, in cooperation with the department of public safety, and persons who represent those who attend dead bodies shall establish for all emergency medical providers including paramedics, ambulance personnel, physicians, nurses, hospital personnel, first responders, peace officers, or firefighters, who provide emergency care services to a person, and shall establish for all persons who attend dead bodies,

protocol, and procedures for the use of universal precautions to prevent the transmission of contagious and infectious diseases.

Sec. 6. NEW SECTION. 246.515 HUMAN IMMUNODEFICIENCY VIRUS-RELATED MATTERS -- EXEMPTION.

The provision of chapters 135H and 135I relating to knowledge and consent do not apply to persons committed to the custody of the department. The department may provide for medically acceptable procedures to inform employees, visitors, and persons committed to the department of possible infection and to protect them from possible infection.

Sec. 7. NEW SECTION. 505.16 APPLICATIONS FOR INSURANCE -- TEST RESTRICTIONS -- DUTIES OF COMMISSIONER.

1. A person engaged in the business of insurance shall not require a test of an individual in connection with an application for insurance for the presence of an antibody to the human immunodeficiency virus unless the individual provides a written release on a form approved by the insurance commissioner. The form shall include information regarding the purpose, content, use, and meaning of the test, disclosure of test results including information explaining the effect of releasing the information to a person engaged in the business of insurance, the purpose of which the test results may be used, and other information approved by the insurance commissioner. The form shall also authorize the person performing the test to provide the results of the test to the insurance company subject to rules of confidentiality, consistent with section 135I.3, approved by the insurance commissioner. As used in this section, "a person engaged in the business of insurance" includes hospital service corporations organized under chapter 514 and health maintenance organizations subject to chapter 514B.

2. The insurance commissioner shall approve rules for carrying out this section including rules relating to the preparation of information to be provided before and after a

test and the protection of confidentiality of personal and medical records of insurance applicants and policyholders.

Sec. 8. The Code editor shall, as appropriate, codify the provisions of this Act, with the exception of section 7 of this Act, and Senate File 2157 and other appropriate Acts approved by the general assembly into one chapter relating to acquired immune deficiency syndrome and shall provide appropriate divisions within that chapter.

Sec. 9. Section 135C.23, subsection 2, Code Supplement 1987, is amended to read as follows:

- 2. A health care facility shall not knowingly admit or retain a resident:
  - a. Who is dangerous to the resident or other residents.
  - b. Who is in an acute stage of alcoholism, drug addiction, or mental illness, or an active state of communicable disease.
  - c. Whose condition or conduct is such that the resident would be unduly disturbing to other residents.
  - d. Who is in need of medical procedures, as determined by a physician, or services which cannot be or are not being carried out in the facility.

This section does not prohibit the admission of a patient with a history of dangerous or disturbing behavior to an intermediate care facility, skilled nursing facility, or county care facility when the intermediate care facility, skilled nursing facility, or county care facility has a program which has received prior approval from the department to properly care for and manage the patient. An intermediate care facility, skilled nursing facility, or county care facility is required to transfer or discharge a resident with dangerous or disturbing behavior when the intermediate care facility, skilled nursing facility, or county care facility cannot control the resident's dangerous or disturbing behavior. The department, in coordination with the state mental health and mental retardation commission, shall adopt rules pursuant to chapter 17A for programs to be required in

intermediate care facilities, skilled nursing facilities, and county care facilities that admit patients or have residents with histories of dangerous or disturbing behavior.

The denial of admission of a person to a health care facility shall not be based upon the patient's condition, which is the existence of a specific disease in the patient, but the decision to accept or deny admission of a patient with a specific disease shall be based solely upon the ability of the health care facility to provide the level of care required by the patient.

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DONALD D. AVENSON  
Speaker of the House

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JO ANN ZIMMERMAN  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2294, Seventy-second General Assembly.

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JOSEPH O'HERN  
Chief Clerk of the House  
Approved May 12, 1988

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TERRY E. BRANSTAD  
Governor