

ASSEMBLY BILL NO. 443—ASSEMBLYMEN PARKS, KOIVISTO,  
PIERCE, LESLIE, OHRENSCHALL, ANDERSON, BUCKLEY,  
CLABORN, DENIS, GERHARDT, HOGAN, KIHUEN,  
KIRKPATRICK, MANENDO, MCCLAIN, SEGERBLOM AND  
SMITH

MARCH 19, 2007

JOINT SPONSORS: SENATORS HORSFORD, TITUS,  
WIENER AND WOODHOUSE

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions relating to communicable  
diseases. (BDR 40-1057)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.  
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to communicable diseases; making various  
changes to provisions concerning the human  
immunodeficiency virus; providing a penalty; and  
providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

**Section 8** of this bill requires each county designated by the Director of the Department of Health and Human Services to provide free testing for the human immunodeficiency virus to persons on an anonymous basis. **Section 12** of this bill requires the Health Division of the Department of Health and Human Services to reimburse those counties for certain costs associated with providing such testing. **Sections 10 and 11** of this bill require each county that the Director designates to provide such testing to: (1) provide certain information to persons who receive a test; and (2) submit to the Health Division a plan for how the county will carry out testing.

**Section 9** of this bill requires the Health Division to establish and maintain for each county a list of providers of health care and medical facilities that treat patients with the human immunodeficiency virus and acquired immunodeficiency syndrome.



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**Section 13** of this bill sets forth penalties for the disclosure to third persons of results of a test for the human immunodeficiency virus.

**Section 14** of this bill requires providers of health care, medical facilities and medical laboratories to provide to persons who test positive for the human immunodeficiency virus, or are diagnosed with acquired immunodeficiency syndrome, appropriate information and referrals to ensure that the persons receive sufficient medical treatment and counseling.

**Section 16** of this bill provides that the Health Division may require any medical facility or medical laboratory that procures, processes, distributes or uses whole blood, plasma, blood product or blood derivative to submit to the Health Division monthly reports concerning the results of tests conducted to detect the presence of communicable diseases.

**Section 18** of this bill prohibits employment discrimination against a person who has tested positive for the human immunodeficiency virus if the fact that the person tested positive would not prevent the proper performance of the work for which he otherwise would have been hired.

**Sections 21-23** of this bill provide that an insurer may decline an application for life insurance or disability insurance on the basis that the applicant tested positive for the human immunodeficiency virus. However, an insurer may not test for the presence of the human immunodeficiency virus unless the insurer obtains the written consent of the applicant and pays the cost of the test. **Section 24** of this bill sets forth penalties for the disclosure to third persons by an insurer of results of a test for the human immunodeficiency virus.

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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** Chapter 441A of NRS is hereby amended by adding thereto the provisions set forth as sections 3 to 16, inclusive, of this act.

**Sec. 2.** *It is the intent of the Legislature that:*

*1. The State Board of Health, the Department of Health and Human Services, and all district, county and city health departments, boards of health and health officers, medical laboratories, medical facilities and providers of health care work together in a collaborative manner to ensure that testing for the human immunodeficiency virus and related counseling services are offered in a culturally and linguistically appropriate manner.*

*2. Information pertaining to testing for the human immunodeficiency virus be reported and maintained in accordance with existing state and federal privacy laws.*

*3. Information pertaining to cases of the human immunodeficiency virus not be used for any purpose other than public health practices, including, without limitation, surveillance and epidemiology.*

**Sec. 3.** *As used in sections 3 to 15, inclusive, of this act, unless the context otherwise requires, the words and terms defined*



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1 *in sections 4 to 7, inclusive, of this act have the meanings ascribed*  
2 *to them in those sections.*

3 **Sec. 4.** *“Department” means the Department of Health and*  
4 *Human Services.*

5 **Sec. 5.** *“Director” means the Director of the Department.*

6 **Sec. 6.** *“Disclose” means to disclose, release, transfer,*  
7 *disseminate or otherwise communicate all or part of any record*  
8 *orally, in writing or by electronic means to any person.*

9 **Sec. 7.** *“Provider of health care” means a physician, nurse*  
10 *or physician assistant licensed in accordance with state law.*

11 **Sec. 8. 1.** *Each county designated by the Director shall*  
12 *make testing for the human immunodeficiency virus available*  
13 *within its jurisdiction at no charge. Such testing must be offered*  
14 *on an anonymous basis through the use of a coded system under*  
15 *which there is no linking of individual identity with the results of*  
16 *the test.*

17 **2.** *A county may offer the testing required pursuant to*  
18 *subsection 1 by way of a contract with a provider of health care,*  
19 *medical laboratory or a medical facility that is licensed by the*  
20 *Department.*

21 **3.** *The Director shall approve the providers and locations of*  
22 *testing sites that will provide the testing required pursuant to*  
23 *subsection 1.*

24 **4.** *Counties, providers of health care, medical laboratories*  
25 *and medical facilities shall not require the disclosure of any*  
26 *personal identifying information, including, without limitation, a*  
27 *name or social security number, for a person to obtain a free test*  
28 *for the human immunodeficiency virus.*

29 **Sec. 9.** *The Health Division shall establish and maintain for*  
30 *each county in the State a current list of providers of health care*  
31 *and medical facilities that treat persons with the human*  
32 *immunodeficiency virus and acquired immunodeficiency*  
33 *syndrome.*

34 **Sec. 10.** *Counties, providers of health care, medical*  
35 *laboratories and medical facilities that provide testing for the*  
36 *human immunodeficiency virus pursuant to section 8 of this act*  
37 *shall:*

38 **1.** *Make available the list of providers of medical care and*  
39 *medical facilities described in section 9 of this act to each person*  
40 *who receives a test for the human immunodeficiency virus.*

41 **2.** *Inform each person who receives a test for the human*  
42 *immunodeficiency virus about the validity and accuracy of the test*  
43 *before the test is performed.*

44 **3.** *Inform each person who receives a test for the human*  
45 *immunodeficiency virus of the results of such test in person.*



1     4. *Inform each person who receives a test for the human*  
2 *immunodeficiency virus about medical and mental health services*  
3 *that are available to the person.*

4     **Sec. 11.** 1. *Each county that is required to provide testing*  
5 *for the human immunodeficiency virus pursuant to section 8 of*  
6 *this act shall submit to the Health Division, in the form prescribed*  
7 *by the Director and not later than December 1, 2007, a plan*  
8 *setting forth the manner in which the county will satisfy the*  
9 *requirements of sections 8 and 10 of this act.*

10    2. *If a county amends the plan after the plan is submitted to*  
11 *the Health Division pursuant to subsection 1, the county shall*  
12 *submit to the Health Division, in the form prescribed by the*  
13 *Director and not later than 30 days after the amendment takes*  
14 *effect, a copy of the amended plan.*

15    **Sec. 12.** 1. *The Health Division shall reimburse, at the*  
16 *rates determined by the Director, any county that is required to*  
17 *provide tests for the human immunodeficiency virus pursuant to*  
18 *section 8 of this act. Such reimbursement must be made for the*  
19 *following costs:*

20    (a) *The costs of administering the tests for the human*  
21 *immunodeficiency virus and of analyzing test samples.*

22    (b) *Any costs associated with informing a person who receives*  
23 *a test for the human immunodeficiency virus of the test's*  
24 *reliability and validity.*

25    (c) *Any costs associated with informing a person of the results*  
26 *of his test for the human immunodeficiency virus and any*  
27 *referrals made to the person for future medical care or treatment.*

28    2. *The Health Division and any county that is required to*  
29 *offer testing for the human immunodeficiency virus pursuant to*  
30 *section 8 of this act may apply for and accept grants, gifts,*  
31 *donations, bequests or devises to offset the costs of providing such*  
32 *tests.*

33    **Sec. 13.** 1. *Except as otherwise provided in subsection 4:*

34    (a) *Any person who negligently discloses the results of a test*  
35 *for the human immunodeficiency virus to a third person in a*  
36 *manner that identifies or provides identifying characteristics of the*  
37 *person to whom the test results apply, shall pay a civil penalty of*  
38 *not more than \$2,500, and court costs.*

39    (b) *Any person who willfully or maliciously discloses the*  
40 *results of a test for the human immunodeficiency virus to a third*  
41 *person in a manner that identifies or provides identifying*  
42 *characteristics of the person to whom the test results apply, shall*  
43 *pay a civil penalty of at least \$5,000 but not more than \$10,000,*  
44 *and court costs.*



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(c) Any person who negligently, willfully or maliciously discloses the results of a test for the human immunodeficiency virus to a third person in a manner that identifies or provides identifying characteristics of the person to whom the test results apply and such disclosure results in economic, bodily or psychological damage to the person to whom the test results apply:

(1) Is guilty of a misdemeanor; or

(2) Shall pay a fine of not more than \$25,000,

↪ or both.

2. In addition to the penalties described in subsection 1, any person who negligently, willfully or maliciously discloses the results of a test for the human immunodeficiency virus to a third person in a manner that identifies or provides identifying characteristics of the person to whom the test results apply is liable for actual damages to the person to whom the test results apply, including, without limitation, damages for economic, bodily or psychological harm that is the proximate result of the disclosure.

3. For the purposes of subsections 1 and 2, each disclosure of the results of a test for the human immunodeficiency virus to a third person in a manner that identifies or provides identifying characteristics of the person to whom the test results apply is a separate and actionable offense.

4. The provisions of this section do not apply:

(a) If a person is otherwise required pursuant to law to disclose the results of a test for the human immunodeficiency virus to a third person in a manner that identifies or provides identifying characteristics of the person to whom the test results apply;

(b) If the person to whom the test results apply has given written authorization for the disclosure; or

(c) To the disclosure of the results of a test for the human immunodeficiency virus in the medical records of the person to whom the test results apply.

**Sec. 14.** All providers of health care, medical facilities and medical laboratories must provide to persons who test positive for the human immunodeficiency virus, or are diagnosed with acquired immunodeficiency syndrome, appropriate information and referrals to ensure that the persons receive sufficient medical treatment and counseling.

**Sec. 15.** The Director may adopt regulations to carry out the provisions of sections 3 to 15, inclusive, of this act.

**Sec. 16.** The Health Division may require any medical facility or medical laboratory that procures, processes, distributes or uses whole human blood, plasma, blood product or blood derivative for the purpose of injection or transfusion to submit to



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1 *the Health Division monthly reports concerning the results of tests*  
2 *to detect the presence of communicable diseases. Such reports*  
3 *must not contain the name or any identifying information about*  
4 *the donor of the blood, plasma, blood product or blood derivative.*

5 **Sec. 17.** NRS 441A.920 is hereby amended to read as follows:

6 441A.920 ~~[Every]~~ *Except as otherwise provided in section 13*  
7 *of this act, every* provider of health care, medical facility or medical  
8 laboratory that willfully fails, neglects or refuses to comply with any  
9 regulation of the Board relating to the reporting of a communicable  
10 disease or any requirement of this chapter is guilty of a  
11 misdemeanor and, in addition, may be subject to an administrative  
12 fine of \$1,000 for each violation, as determined by the Board.

13 **Sec. 18.** Chapter 613 of NRS is hereby amended by adding  
14 thereto a new section to read as follows:

15 *It is an unlawful employment practice:*

16 1. *For an employer to fail or refuse to hire and employ*  
17 *employees;*

18 2. *For an employment agency to fail to classify or refer any*  
19 *person for employment;*

20 3. *For a labor organization to fail to classify its membership*  
21 *or to fail to classify or refer any person for employment; or*

22 4. *For an employer, labor organization or joint labor-*  
23 *management committee controlling apprenticeship or other*  
24 *training or retraining programs to fail to admit or employ any*  
25 *person in any such program,*

26 *↪ because the person has tested positive for the human*  
27 *immunodeficiency virus, if the fact that the person tested positive*  
28 *for the human immunodeficiency virus would not prevent proper*  
29 *performance of the work for which the person would otherwise*  
30 *have been hired, classified, referred or prepared under a training*  
31 *or retraining program.*

32 **Sec. 19.** NRS 613.310 is hereby amended to read as follows:

33 613.310 As used in NRS 613.310 to 613.435, inclusive, *and*  
34 *section 18 of this act,* unless the context otherwise requires:

35 1. "Disability" means, with respect to a person:

36 (a) A physical or mental impairment that substantially limits one  
37 or more of the major life activities of the person;

38 (b) A record of such an impairment; or

39 (c) Being regarded as having such an impairment.

40 2. "Employer" means any person who has 15 or more  
41 employees for each working day in each of 20 or more calendar  
42 weeks in the current or preceding calendar year, but does not  
43 include:

44 (a) The United States or any corporation wholly owned by the  
45 United States.



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(b) Any Indian tribe.

(c) Any private membership club exempt from taxation pursuant to 26 U.S.C. § 501(c).

3. "Employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer, but does not include any agency of the United States.

4. "Labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or other conditions of employment.

5. "Person" includes the State of Nevada and any of its political subdivisions.

6. "Sexual orientation" means having or being perceived as having an orientation for heterosexuality, homosexuality or bisexuality.

**Sec. 20.** Chapter 679A of NRS is hereby amended by adding thereto the provisions set forth as sections 21 to 24, inclusive, of this act.

**Sec. 21.** *An insurer may decline an application for life insurance or disability insurance on the basis that the applicant tested positive for the human immunodeficiency virus.*

**Sec. 22. 1.** *An insurer shall not test for the presence of the human immunodeficiency virus in connection with an application for insurance for the purpose of determining insurability, unless the insurer obtains the written consent of the applicant.*

**2.** *The written consent required pursuant to subsection 1 must be in the form prescribed by the Commissioner and include, without limitation, a description of the test to be performed, the potential uses of the test results, the limitations and meaning of the test results, and the applicant's right to confidential treatment of the test results.*

**3.** *Before an insurer may obtain the written consent required pursuant to subsection 1, the insurer shall:*

*(a) Provide the applicant with information pertaining to the human immunodeficiency virus, including, without limitation, its causes and symptoms, the manner in which it is spread, the test that will be used to detect the human immunodeficiency virus, and what the applicant may do if the test results are positive or negative; and*

*(b) Provide the applicant with a list of counseling resources available where the applicant may obtain assistance in*



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1 *understanding the meaning of the test for the human*  
2 *immunodeficiency virus and the results of the test.*

3 4. *An insurer shall notify an applicant of a positive test for*  
4 *the human immunodeficiency virus by notifying the physician*  
5 *whom the applicant designates in his written consent. If the*  
6 *applicant has not designated a physician to receive such*  
7 *information, the insurer shall inform the applicant of the test*  
8 *results and explain to the applicant that he should contact a*  
9 *provider of health care for appropriate counseling and referrals.*

10 5. *As used in this section, "provider of health care" has the*  
11 *meaning ascribed to it in section 7 of this act.*

12 **Sec. 23.** *An insurer shall not:*

13 1. *Require an applicant for life insurance or disability*  
14 *insurance to undergo a test for the human immunodeficiency*  
15 *virus as a condition of obtaining coverage unless the cost of the*  
16 *test is paid by the insurer.*

17 2. *Consider the marital status or sexual orientation of an*  
18 *applicant for life insurance or disability insurance in determining*  
19 *whether to require the applicant to undergo a test for the human*  
20 *immunodeficiency virus as a condition for coverage.*

21 3. *Require an applicant for life insurance or disability*  
22 *insurance to undergo a test for the human immunodeficiency*  
23 *virus if the results of the test would be used exclusively or*  
24 *nonexclusively for the purpose of determining eligibility for*  
25 *coverage that pays the cost of surgery, hospital care or medical*  
26 *care or coverage under a nonprofit hospital service plan or health*  
27 *care service plan.*

28 **Sec. 24.** 1. *Except as otherwise provided in subsection 4:*

29 (a) *Any insurer who negligently discloses the results of a test*  
30 *for the human immunodeficiency virus to a third person in a*  
31 *manner that identifies or provides identifying characteristics of the*  
32 *person to whom the test results apply, shall pay a civil penalty of*  
33 *not more than \$1,000, and court costs.*

34 (b) *Any insurer who willfully or maliciously discloses the*  
35 *results of a test for the human immunodeficiency virus to a third*  
36 *person in a manner that identifies or provides identifying*  
37 *characteristics of the person to whom the test results apply, shall*  
38 *pay a civil penalty of at least \$1,000 but not more than \$5,000, and*  
39 *court costs.*

40 (c) *Any insurer who negligently, willfully or maliciously*  
41 *discloses the results of a test for the human immunodeficiency*  
42 *virus to a third person in a manner that identifies or provides*  
43 *identifying characteristics of the person to whom the test results*  
44 *apply and such disclosure results in economic, bodily or*  
45 *psychological damage to the person to whom the test results apply:*





- 1           (1) *Is guilty of a misdemeanor; or*  
2           (2) *Shall pay a fine of not more than \$10,000,*  
3    *↪ or both.*

4           2. *In addition to the penalties described in subsection 1, any*  
5 *insurer who negligently, willfully or maliciously discloses the*  
6 *results of an human immunodeficiency virus test to a third person*  
7 *in a manner that identifies or provides identifying characteristics*  
8 *of the person to whom the test results apply is liable for actual*  
9 *damages to the person to whom the test results apply, including,*  
10 *without limitation, damages for economic, bodily or psychological*  
11 *harm that is the proximate result of the disclosure.*

12          3. *For the purposes of subsections 1 and 2, each disclosure of*  
13 *the results of a test for the human immunodeficiency virus to a*  
14 *third person in a manner that identifies or provides identifying*  
15 *characteristics of the person to whom the test results apply is a*  
16 *separate and actionable offense.*

17          4. *The provisions of this section do not apply:*

18          (a) *If a person is otherwise required pursuant to law to*  
19 *disclose the results of a human immunodeficiency virus test to a*  
20 *third person in a manner that identifies or provides identifying*  
21 *characteristics of the person to whom the test results apply;*

22          (b) *If the person to whom the test results apply has given*  
23 *written authorization for the disclosure; or*

24          (c) *To the disclosure of the results of a human*  
25 *immunodeficiency virus test in the medical records of the person*  
26 *to whom the test results apply.*

