

1 **State of Arkansas**  
2 **78th General Assembly**  
3 **Regular Session, 1991**  
4 **By: Representative Landers**

# A Bill

**HOUSE BILL**

## For An Act To Be Entitled

"THE HIV SHIELD LAW."

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

11

12 SECTION 1. The General Assembly finds that:

13 (1) The use of tests designed to reveal a condition indicative of Human  
14 Immunodeficiency Virus (HIV) infection can be a valuable tool in protecting  
15 the public health.

16 (2) The public health will be served by facilitating the confidential  
17 use of tests designed to reveal HIV infection.

18 (3) Health care providers in particular require early information  
19 relating to the HIV status of patients when there is a direct skin or mucous  
20 membrane contact with the blood or bodily fluids of an individual which is of  
21 a nature that may transmit HIV.

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23 SECTION 2. When used in this Act:

24 (a) "Department" means the Arkansas Department of Health.

25 (b) "AIDS" means acquired immunodeficiency syndrome, as defined by the  
26 Arkansas Department of Health.

27 (c) "HIV" means the Human Immunodeficiency virus or any other  
28 identified causative agent of AIDS.

29 (d) "Written informed consent" means an agreement in writing executed  
30 by the subject of a test or the subject's legally authorized representative  
31 without undue inducement or any element of force, fraud, deceit, duress or  
32 other form of constraint or coercion, which entails at least the following:

33 (1) a fair explanation of the test, including its purpose, potential  
34 uses, limitations and the meaning of its results; and

35 (2) a fair explanation of the procedures to be followed, including the

1 voluntary nature of the test, the right to withdraw consent to the testing  
2 process at any time, the right to anonymity to the extent provided by law with  
3 respect to participation in the test and disclosure of test results, and the  
4 right to confidential treatment of information identifying the subject of the  
5 test and the results of the test, to the extent provided by law.

6 (e) "Health facility" means a hospital, nursing home, blood bank, blood  
7 center, sperm bank, or other health care institution.

8 (f) "Health care provider" means any physician, nurse, paramedic,  
9 psychologist or other person providing medical, nursing, psychological, or  
10 other health care services of any kind.

11 (g) "Test" or "HIV test" means a test to determine the presence of the  
12 antibody or antigen to HIV, or of HIV infection.

13 (h) "Person" includes any natural person, partnership, association,  
14 joint venture, trust, governmental entity, public or private corporation,  
15 health facility or other legal entity.

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17 SECTION 2. Written informed consent, information and counseling are not  
18 required for the performance of an HIV test for the purpose of research, if  
19 the testing is performed in such a way that the identity of the test subject  
20 is not known and may not be retrieved by the researcher, and in such a way  
21 that the test subject is not informed of the results of the testing.

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23 SECTION 3. (a) Written informed consent, information and counseling  
24 are not required for a health care provider or health facility to perform a  
25 test when the health care provider or health facility procures, processes,  
26 distributes or uses a human body part donated for a purpose specified under  
27 the Uniform Anatomical Gift Act, or semen provided prior to the effective date  
28 of this Act for the purpose of artificial insemination, and such a test is  
29 necessary to assure medical acceptability of such gift or semen for the  
30 purpose intended.

31 (b) Written informed consent is not required for a health care provider  
32 or health facility to perform a test when a health care provider or employee  
33 of a health facility, or a policeman or a firefighter or an emergency medical  
34 technician, is involved in a direct skin or mucous membrane contact with the  
35 blood or bodily fluids of an individual which is of a nature that may transmit

1 HIV, as determined by a physician in his medical judgment. Should such test  
2 prove to be positive, the results of the test shall be provided to the  
3 affected person and to the patient and appropriate counseling along with  
4 provision of the test results shall be provided.

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6 SECTION 4. Written informed consent, information and counseling are not  
7 required for the performance of an HIV test when in the judgment of the  
8 physician, such testing is medically indicated to provide appropriate  
9 diagnosis and treatment to the subject of the test, provided that the subject  
10 of the test has otherwise provided his or her consent to such physician for  
11 medical treatment.

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13 SECTION 5. A person may disclose or be compelled to disclose the  
14 identity of any person upon whom a test is performed, or the results of such a  
15 test in a manner which permits identification of the subject of the test, only  
16 to the following persons:

17 (a) The subject of the test or the subject's legally authorized  
18 representative.

19 (b) Any person designated in a legally effective release of the test  
20 results executed by the subject of the test or the subject's legally  
21 authorized representative.

22 (c) An authorized agent or employee of a health facility or health care  
23 provider if the health facility or health care provider itself is authorized  
24 to obtain the test results, the agent or employee provides patient care or  
25 handles or processes specimens of body fluids or tissues, and the agent or  
26 employee has a need to know such information.

27 (d) The Department, in accordance with rules promulgated under Arkansas  
28 Code 20-7-109 and 20-15-901 et seq. and such other public health laws  
29 pertaining to reporting and controlling the spread of disease.

30 (e) A health facility or health care provider which procures,  
31 processes, distributes or uses: (i) a human body part from a diseased person  
32 with respect to medical information regarding that person; or (ii) semen  
33 provided prior to the effective date of this Act for the purpose of artificial  
34 insemination.

35 (f) Health facility staff committees for the purposes of conducting

1 program monitoring, program evaluation or service reviews.

2 (g) A person allowed access to said record by a court order which is  
3 issued in compliance with the following provisions:

4 (i) No court of this State shall issue such order unless the  
5 court finds that the person seeking the test results has demonstrated a  
6 compelling need for the test results which cannot be accommodated by other  
7 means. In assessing compelling need, the court shall weigh the need for  
8 disclosure against the privacy interest of the test subject and the public  
9 interest which may be disserved by disclosure which deters blood, organ and  
10 semen donation and future HIV related testing.

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

15 (iii) Before granting any such order, the court shall provide the  
16 individual whose test result is in question with notice and a reasonable  
17 opportunity to participate in the proceedings if he or she is not already a  
18 party.

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

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

28 (h) Any health care provider or employee of a health facility, and any  
29 policeman, firefighter or any emergency medical technician, involved in an  
30 accidental direct skin or mucous membrane contact with the blood or bodily  
31 fluids of an individual which is of a nature that may transmit HIV, as  
32 determined by a physician in his medical judgment.

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34 SECTION 6. Written informed consent is not required for the performance  
35 of an HIV test upon a person who is specifically required by law to be so

1 tested.

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3           SECTION 7. (a) Nothing in this Act shall be construed to impose civil  
4 liability or criminal sanction for disclosure of a test result in accordance  
5 with any reporting requirement of the Department for a diagnosed case of HIV  
6 infection, AIDS or a related condition or as provided in Section 5.

7           (b) Nothing in this Act shall be construed to impose civil liability or  
8 criminal sanction for performing a test without written informed consent  
9 pursuant to the provisions of subsection (b) of Section 3 of this Act.

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11           SECTION 8. All provisions of this Act of a general and permanent nature  
12 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
13 Revision Commission shall incorporate the same in the Code.

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15           SECTION 9. If any provision of this Act or the application thereof to  
16 any person or circumstance is held invalid, such invalidity shall not affect  
17 other provisions or applications of the Act which can be given effect without  
18 the invalid provision or application, and to this end the provisions of this  
19 Act are declared to be severable.

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21           SECTION 10. All laws and parts of laws in conflict with this Act are  
22 hereby repealed.

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