

COMMITTEE SUBSTITUTE

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Senate Bill No. 488

(By Senators Stollings, Foster, Hall, Wills, Snyder, Kessler
(Acting President), Jenkins, Plymale and Miller)

[Originating in the Committee on the Judiciary;
reported February 24, 2011.]

A BILL to repeal §16-3C-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §16-3C-1, §16-3C-2 and §16-3C-3 of said code, all relating to HIV testing generally; repealing the authority of the Department of Corrections to conduct AIDS-related study; providing for AIDS-related testing and confidentiality of records; providing definitions; providing who may request testing; providing when testing may be mandated; providing for confidentiality of records; providing enforcement mechanism for orders of the Commis-

sioner of the Bureau for Public Health; eliminating requirements for counseling in certain circumstances; eliminating requirement for information regarding HIV and AIDS be provided to persons applying for marriage licenses; and providing when disclosure is permitted.

Be it enacted by the Legislature of West Virginia:

That §16-3C-7 of the Code of West Virginia, 1931, as amended, be repealed; and that §16-3C-1, §16-3C-2 and §16-3C-3 of said code be amended and reenacted, all to read as follows:

**ARTICLE 3C. AIDS-RELATED MEDICAL TESTING AND RECORDS
CONFIDENTIALITY ACT.**

§16-3C-1. Definitions.

- 1 When used in this article:
- 2 (a) "AIDS" means acquired immunodeficiency syndrome.
- 3 ~~(b) "ARC" means AIDS-related complex.~~
- 4 ~~(c) (b)~~ "Bureau" means the Bureau ~~of~~ for Public ~~health~~
- 5 Health.
- 6 ~~(d) (c)~~ "Commissioner" means the commissioner of the
- 7 Bureau ~~of~~ for Public Health.
- 8 (d) "Convicted" includes pleas of guilty and pleas of nolo
- 9 contendere accepted by the court having jurisdiction of the
- 10 criminal prosecution, a finding of guilty following a jury trial

11 or a trial to a court and an adjudicated juvenile offender as
12 defined in sections two and four, article one, chapter forty-
13 nine of this code.

14 (e) “Department” means the State Department of Health
15 and Human Resources.

16 (f) “Funeral director” ~~shall have~~ has the same meaning
17 ascribed to such term in section ~~four~~ three, article six,
18 chapter thirty of this code.

19 (~~g~~) “Convicted” ~~includes pleas of guilty and pleas of nolo~~
20 ~~contendere accepted by the court having jurisdiction of the~~
21 ~~criminal prosecution, a finding of guilty following a jury trial~~
22 ~~or a trial to a court, and an adjudicated juvenile offender as~~
23 ~~defined in section three, article five-b, chapter forty-nine of~~
24 ~~this code.~~

25 (~~h~~) (g) “Funeral establishment” ~~shall have~~ has the same
26 meaning ascribed to ~~such~~ that term in section ~~four~~ three,
27 article six, chapter thirty of this code.

28 (~~i~~) (h) “HIV” means the human immunodeficiency virus
29 identified as the causative agent of AIDS.

30 (~~j~~) (i) “HIV-related test” means a test for the HIV antibody
31 or antigen or any future valid test approved by the bureau,

32 the federal drug administration or the ~~centers for disease~~
33 ~~control~~ Centers for Disease Control and Prevention.

34 ~~(k)~~ (j) “Health facility” means a hospital, nursing home,
35 physician’s office, clinic, blood bank, blood center, sperm
36 bank, laboratory or other health care institution.

37 ~~(k)~~ (k) “Health care provider” means any physician, dentist,
38 nurse, paramedic, psychologist or other person providing
39 medical, dental, nursing, psychological or other health care
40 services of any kind.

41 (l) “Health Information Exchange” means the electronic
42 movement of health-related information in accord with law
43 and nationally recognized standards.

44 (m) “High risk behavior” means behavior by a person
45 including, but not limited to: (i) Unprotected sex with a
46 person who is living with HIV; (ii) unprotected sex in
47 exchange for money or drugs; (iii) unprotected sex with
48 multiple partners; (iv) anonymous unprotected sex; (v) or
49 needle sharing; (vi) diagnosis of a sexually transmitted
50 disease; or (vii) unprotected sex or sharing injecting equip-
51 ment in a high HIV prevalence setting or with a person who
52 is living with HIV.

53 (n) “Medical or emergency responders” means paid or
54 volunteer firefighters, law-enforcement officers, emergency
55 medical technicians, paramedics, or other emergency service
56 personnel, providers or entities acting within the usual
57 course of their duties; good samaritans and other nonmedical
58 and nonemergency personnel providing assistance in emer-
59 gencies; funeral directors; health care providers; commis-
60 sioner of the Bureau ~~of~~ for Public Health; and all employees
61 thereof and volunteers associated therewith.

62 (o) “Patient” or “test subject” or “subject of the test”
63 means the person upon whom a HIV test is performed, or the
64 person who has legal authority to make health care decisions
65 for the test subject.

66 ~~(o)~~(p) “Permitted purpose” is a disclosure permitted by the
67 Health Insurance Portability and Accountability Act of 1996
68 as amended, or a disclosure consented to or authorized by a
69 patient or test subject.

70 ~~(p)~~ (q) “Person” includes any natural person, partnership,
71 association, joint venture, trust, public or private corpora-
72 tion or health facility.

73 ~~(q)~~ (r) “Release of test results” means a ~~written authoriza-~~
74 ~~tion for~~ permitted or authorized disclosure of HIV-related

75 test results. ~~that is signed, dated and specifies to whom~~
76 ~~disclosure is authorized and the time period the release is to~~
77 ~~be effective.~~

78 (r) (s) “Significant exposure” means:

79 (1) Exposure to blood or body fluids through needlestick,
80 instruments, sharps, surgery or traumatic events; or

81 (2) Exposure of mucous membranes to visible blood or
82 body fluids, to which universal precautions apply according
83 to the national ~~centers for disease control~~ Centers for Disease
84 Control and Prevention, and laboratory specimens that
85 contain HIV (e.g. suspensions of concentrated virus); or

86 (3) Exposure of skin to visible blood or body fluids, when
87 the exposed skin is chapped, abraded or afflicted with
88 dermatitis or the contact is prolonged or involving an
89 extensive area.

90 (s) (t) “Source patient” means any person whose body
91 fluids have been the source of a significant exposure to a
92 medical or emergency responder.

93 (u) “Targeted testing” means performing an HIV-related
94 test for sub-populations at higher risk, typically defined on
95 the basis of behavior, clinical or demographic characteris-
96 tics.

97 (t) (v) “Victim” means the person or persons to whom
98 transmission of bodily fluids from the perpetrator of the
99 crimes of sexual abuse, sexual assault, incest or sexual
100 molestation occurred or was likely to have occurred in the
101 commission of such crimes.

§16-3C-2. Testing.

1 (a) HIV-related testing on a voluntary basis should be
2 recommended ~~may be requested by a~~ any healthcare provider
3 in a health facility as part of a routine screening for treatable
4 conditions and as part of routine prenatal and perinatal care.
5 A physician, dentist, nurse practitioner, nurse midwife,
6 physician assistant or the commissioner may also request
7 targeted testing for any of the following:

8 (1) When there is cause to believe that the test could be
9 positive. Persons who engage in high risk behavior should be
10 encouraged to be screened for HIV at least annually;

11 (2) When there is cause to believe that the test could
12 provide information important in the care of the patient; or

13 (3) When there is cause to believe that the results of HIV-
14 testing of samples of blood or body fluids from a source
15 patient could provide information important in the care of
16 medical or emergency responders or other persons identified

17 in regulations proposed by the department for approval by
18 the Legislature in accordance with the provisions of article
19 three, chapter twenty-nine-a of this code: *Provided*, That the
20 source patient whose blood or body fluids is being tested
21 pursuant to this section must have come into contact with a
22 medical or emergency responder or other person in such a
23 way that a significant exposure has occurred;

24 (4) ~~When any person voluntarily consents to the test there~~
25 ~~is no record of any HIV-related testing during pregnancy and~~
26 ~~the woman presents for labor and delivery.~~

27 (b) ~~The requesting physician, dentist or the commissioner~~
28 ~~shall provide the patient with written information in the~~
29 ~~form of a booklet or pamphlet prepared or approved by the~~
30 ~~bureau or, in the case of persons who are unable to read,~~
31 ~~shall either show a video or film prepared or approved by the~~
32 ~~bureau to the patient, or read or cause to be read to the~~
33 ~~patient the information prepared or approved by the bureau~~
34 ~~which contains the following information~~ A patient volun-
35 tarily consents to the test as follows:

36 (1) ~~An explanation of the test, including its purpose,~~
37 ~~potential uses, limitations, the meaning of its results and any~~
38 ~~special relevance to pregnancy and prenatal care~~ The patient

39 is informed either orally or in writing that HIV-related
40 testing will be performed as part of his or her routine care,
41 that HIV-related testing is voluntary and that the patient
42 may decline HIV-related testing (opt-out); or

43 ~~(2) An explanation of the procedures to be followed~~ The
44 patient is informed that the patient's general consent for
45 medical care includes consent for HIV-related testing.

46 ~~(c) An explanation that the test is voluntary and may be~~
47 ~~obtained anonymously~~ A patient refuses to consent to the
48 test if a patient opts-out of HIV-related testing, the patient
49 is informed when the health care provider in the provider's
50 professional opinion believes HIV-related testing is recom-
51 mended, and that HIV-related testing may be obtained
52 anonymously at a local or county health department.

53 ~~(4) An explanation that the consent for the test may be~~
54 ~~withdrawn at any time prior to drawing the sample for the~~
55 ~~test and that such withdrawal of consent may be given orally~~
56 ~~if the consent was given orally, or shall be in writing if the~~
57 ~~consent was given in writing;~~

58 ~~(5) An explanation of the nature and current knowledge of~~
59 ~~asymptomatic HIV infection, ARC and AIDS and the rela-~~
60 ~~tionship between the test result and those diseases; and~~

61 ~~(6) Information about behaviors known to pose risks for~~
62 ~~transmission of HIV infection.~~

63 ~~(c) A person seeking an HIV-related test who wishes to~~
64 ~~remain anonymous has the right to do so, and to provide~~
65 ~~written, informed consent through use of a coded system~~
66 ~~with no linking or individual identity to the test requests or~~
67 ~~results. A health care provider who does not provide HIV-~~
68 ~~related tests on an anonymous basis shall refer such a person~~
69 ~~to a test site which does provide anonymous testing, or to any~~
70 ~~local or county health department which shall provide for~~
71 ~~performance of an HIV-related test and counseling.~~

72 (d) Any person seeking an HIV-related test in a local or
73 county health department or other HIV test setting provided
74 by the commissioner who wishes to remain anonymous has
75 the right to do so, and to be provided written informed
76 consent through use of a coded system with no linking of
77 individual identity to the test request or results.

78 ~~(d) At the time of learning of any test result, the patient~~
79 ~~shall be provided with counseling or referral for counseling~~
80 ~~for coping with the emotional consequences of learning any~~
81 ~~test result. This may be done by brochure or personally, or~~
82 ~~both.~~

83 (e) No ~~consent for~~ option to opt-out of HIV-related testing
84 is required and the provisions of subsection (a) and (b) of this
85 section do not apply for the following:

86 (1) A health care provider or health facility performing an
87 HIV-related test on the donor or recipient when the health
88 care provider or health facility procures, processes, distrib-
89 utes or uses a human body part (including tissue and blood
90 or blood products) donated for a purpose specified under the
91 uniform anatomical gift act, or for transplant recipients, or
92 semen provided for the purpose of artificial insemination and
93 such test is necessary to assure medical acceptability of a
94 recipient or such gift or semen for the purposes intended;

95 (2) The performance of an HIV-related test in documented
96 bona fide medical emergencies, as determined by a treating
97 physician taking into account the nature and extent of the
98 exposure to another person, when the subject of the test is
99 unable or unwilling to grant or withhold consent, and the
100 test results are necessary for medical diagnostic purposes to
101 provide appropriate emergency care or treatment to a
102 medical or emergency responder, or any other person who
103 has come into contact with a source patient in such a way
104 that a significant exposure necessitates HIV-testing or to a

105 source patient who is unable to consent in accordance with
106 ~~regulations~~ rules proposed by the department for approval
107 by the Legislature in accordance with article three, chapter
108 twenty-nine-a of this code: *Provided*, That necessary
109 treatment may not be withheld pending HIV test results:
110 *Provided, however*, That all sampling and HIV-testing of
111 samples of blood and body fluids, without the ~~expressed~~
112 ~~written consent of the test subject~~ opportunity for the source
113 patient or patient's representative to opt-out of the testing,
114 shall be through the use of a pseudonym and in accordance
115 with ~~regulations~~ rules proposed by the department for
116 approval by the Legislature in accordance with article three,
117 chapter twenty-nine-a of this code; or *Provided further*, That
118 ~~the department shall propose emergency rules pursuant to~~
119 ~~the provisions of section fifteen, article three, chapter~~
120 ~~twenty-nine-a of this code on or before September 1, 1998,~~
121 addressing such matters as, but not limited to:

122 (A) ~~Sampling and testing of blood and body fluids for HIV-~~
123 ~~related infections including: (i) The taking of samples from~~
124 ~~source patients; (ii) testing samples; (iii) confidentiality; (iv)~~
125 ~~documentation; (v) post-test counseling; and (vi) notices to~~
126 ~~the department by health care providers of: (I) Test results~~

127 found to be positive and situations where sampling; and (H)
128 testing was performed without the written consent of the test
129 subject; and

130 (B) ~~Costs associated with sampling, testing, counseling,~~
131 ~~initial prophylactic treatment and compliance with this~~
132 ~~article: *Provided, That:* (i) The ordering of samples of blood~~
133 ~~or body fluids for HIV-test or testing of available samples by:~~
134 ~~(i) A treating physician of a medical or emergency responder;~~
135 ~~or (ii) a treating physician of the source patient; and (ii) the~~
136 ~~disclosure of the results of HIV-testing of the source patient;~~
137 ~~in accordance with regulations proposed by the department~~
138 ~~for approval by the Legislature pursuant to article three,~~
139 ~~chapter twenty-nine-a of this code, shall be deemed within~~
140 ~~acceptable standards of medical care in the State of West~~
141 ~~Virginia and shall not create a legal cause of action on the~~
142 ~~part of the source patient against: (i) The treating physician~~
143 ~~of the medical or emergency responder; or (ii) the treating~~
144 ~~physician of the source patient; or (iii) any health care~~
145 ~~provider or laboratory assisting such treating physicians.~~

146 (3) The performance of an HIV-related test for the purpose
147 of research if the testing is performed in a manner by which

148 the identity of the test subject is not known and may not be
149 retrieved by the researcher.

150 (f) Mandated testing:

151 (1) The performance of any HIV-related testing that is or
152 becomes mandatory by court order or other legal process
153 described herein ~~shall~~ does not require consent of the subject
154 but will include counseling.

155 (2) The court having jurisdiction of the criminal prosecu-
156 tion shall order that an HIV-related test be performed on any
157 persons ~~convicted of~~ charged with any of the following
158 crimes or offenses:

159 (i) Prostitution; or

160 (ii) Sexual abuse, sexual assault, incest or sexual molesta-
161 tion.

162 (3) HIV-related tests performed on persons ~~convicted of~~
163 charged with prostitution, sexual abuse, sexual assault,
164 incest or sexual molestation shall be confidentially adminis-
165 tered by a designee of the bureau or the local or county
166 health department having proper jurisdiction. The commis-
167 sioner may designate health care providers in regional jail
168 facilities to administer HIV-related tests on such ~~convicted~~

169 persons if he or she ~~deems~~ determines it necessary and
170 expedient.

171 (4) When the ~~director of the department~~ Commissioner of
172 the Bureau of Public Health knows or has reason to believe,
173 because of medical or epidemiological information, that a
174 person, including, but not limited to, a person such as an IV
175 drug abuser, or a person who may have a sexually transmit-
176 ted disease, or a person who has sexually molested, abused
177 or assaulted another, has HIV infection and is or may be a
178 danger to the public health, he or she may issue an order to:

179 (i) Require a person to be examined and tested to deter-
180 mine whether the person has HIV infection;

181 (ii) Require a person with HIV infection to report to a
182 qualified physician or health worker for counseling; and

183 (iii) Direct a person with HIV infection to cease and desist
184 from specified conduct which endangers the health of others.

185 (5) If any person violates a cease and desist order issued
186 pursuant to this rule and, by virtue of that violation, the
187 person presents a danger to the health of others, the director
188 shall apply to the circuit court of Kanawha County to
189 enforce the cease and desist order by imposing any restric-

190 tions upon the person that are necessary to prevent the
191 specific conduct that endangers the health of others.

192 ~~(5)~~ (6) A person convicted of ~~such the~~ offenses described in
193 this section shall be required to undergo HIV-related testing
194 and counseling immediately upon conviction and the court
195 having jurisdiction of the criminal prosecution ~~shall~~ may not
196 release ~~such the~~ convicted person from custody and shall
197 revoke any order admitting the defendant to bail until HIV-
198 related testing and counseling have been performed and the
199 result is known. The HIV-related test result obtained from
200 the convicted person is to be transmitted to the court and,
201 after the convicted person is sentenced, made part of the
202 court record. If the convicted person is placed in the custody
203 of the Division of Corrections, the court shall transmit a copy
204 of the convicted person's HIV-related test results to the
205 Division of Corrections. The HIV-related test results shall be
206 closed and confidential and disclosed by the court and the
207 bureau only in accordance with the provisions of section
208 three of this article.

209 ~~(6) A person charged with prostitution, sexual abuse,~~
210 ~~sexual assault, incest or sexual molestation shall be informed~~
211 ~~upon initial court appearance by the judge or magistrate~~

212 ~~responsible for setting the person's condition of release~~
213 ~~pending trial of the availability of voluntary HIV-related~~
214 ~~testing and counseling conducted by the bureau.~~

215 (7) The prosecuting attorney shall inform the victim, or
216 parent or guardian of the victim, at the earliest stage of the
217 proceedings of the availability of voluntary HIV-related
218 testing and counseling conducted by the bureau and that his
219 or her best health interest would be served by submitting to
220 HIV-related testing and counseling. HIV-related testing for
221 the victim shall be administered at his or her request on a
222 confidential basis and shall be administered in accordance
223 with the ~~centers for disease control~~ Centers for Disease
224 Control and Prevention guidelines of the United States
225 Public Health Service in effect at the time of such request.
226 The victim who obtains an HIV-related test shall be provided
227 with pre and post-test counseling regarding the nature,
228 reliability and significance of the HIV-related test and the
229 confidential nature of the test. HIV-related testing and
230 counseling conducted pursuant to this subsection shall be
231 performed by the designee of the commissioner of the bureau
232 or by any local or county health department having proper
233 jurisdiction.

234 (8) If a person receives counseling or is tested under this
235 subsection and is found to be HIV infected and the person is
236 not incarcerated, the person shall be referred by the health
237 care provider performing the counseling or testing for
238 appropriate medical care and support services. The local or
239 county health departments or any other agency ~~providing~~
240 ~~counseling or testing~~ under this subsection ~~shall~~ may not be
241 financially responsible for medical care and support services.
242 ~~received by a person as a result of a referral made under this~~
243 ~~subsection.~~

244 (9) The commissioner of the bureau or his or her designees
245 may require an HIV test for the protection of a person who
246 was possibly exposed to HIV infected blood or other body
247 fluids as a result of receiving or rendering emergency
248 medical aid or who possibly received such exposure as a
249 funeral director. Results of such a test of the person causing
250 exposure may be used by the requesting physician for the
251 purpose of determining appropriate therapy, counseling and
252 psychological support for the person rendering emergency
253 medical aid including good Samaritans, as well as for the
254 patient, or individual receiving the emergency medical aid.

255 (10) If an HIV-related test required on persons convicted of
256 prostitution, sexual abuse, sexual assault, incest or sexual
257 molestation results in a negative reaction, upon motion of the
258 state, the court having jurisdiction over the criminal prose-
259 cution may require the subject of the test to submit to further
260 HIV-related tests performed under the direction of the
261 bureau in accordance with the ~~centers for disease control~~
262 Centers for Disease Control and Prevention guidelines of the
263 United States Public Health Service in effect at the time of
264 the motion of the state.

265 (11) The costs of mandated testing and counseling provided
266 under this subsection and pre and postconviction HIV-
267 related testing and counseling provided the victim under the
268 direction of the bureau pursuant to this subsection shall be
269 paid by the bureau.

270 (12) The court having jurisdiction of the criminal prosecu-
271 tion shall order a person convicted of prostitution, sexual
272 abuse, sexual assault, incest or sexual molestation to pay
273 restitution to the state for the costs of any HIV-related
274 testing and counseling provided the convicted person and the
275 victim, unless the court has determined ~~such~~ the convicted
276 person to be indigent.

277 (13) Any funds recovered by the state as a result of an
278 award of restitution under this subsection shall be paid into
279 the State Treasury to the credit of a special revenue fund to
280 be known as the "HIV-testing fund" which is hereby created.
281 The moneys so credited to ~~such~~ the fund may be used solely
282 by the bureau for the purposes of facilitating the perfor-
283 mance of HIV-related testing and counseling under the
284 provisions of this article.

285 ~~(h) (g) The commissioner of the bureau may obtain and test~~
286 ~~specimens for AIDS or HIV infection for research or epide-~~
287 ~~miological purposes without consent of the person from~~
288 ~~whom the specimen is obtained if all personal identifying~~
289 ~~information is removed from the specimen prior to testing.~~

290 ~~(i) (g)~~ Nothing in this section is applicable to any insurer
291 regulated under chapter thirty-three of this code: *Provided,*
292 That the commissioner of insurance shall develop standards
293 regarding consent for use by insurers which test for the
294 presence of the HIV antibody.

295 ~~(j) (h)~~ Whenever consent of the subject to the performance
296 of HIV-related testing is required under this article, any such
297 consent obtained, whether orally or in writing, shall be
298 ~~deemed~~ considered to be a valid and informed consent if it is

299 given after compliance with the provisions of subsection (b)
300 of this section.

**§16-3C-3. Confidentiality of records; permitted disclosure; no duty
to notify.**

1 (a) No person may disclose or be compelled to disclose the
2 identity of any person upon whom an HIV-related test is
3 performed, or the results of such a test in a manner which
4 permits identification of the subject of the test, except to the
5 following persons:

6 (1) The subject of the test;

7 (2) The victim of the crimes of sexual abuse, sexual assault,
8 incest or sexual molestation at the request of the victim or
9 the victim's legal guardian, or of the parent or legal guardian
10 of the victim if the victim is ~~an infant~~ a minor where disclo-
11 sure of the HIV-related test results of the convicted sex
12 offender are requested;

13 (3) Any person who secures a specific release of test results
14 executed by the subject of the test;

15 (4) A funeral director or an authorized agent or employee
16 of a health facility or health care provider if the funeral
17 establishment, health facility or health care provider itself is
18 authorized to obtain the test results, the agent or employee

19 provides patient care or handles or processes specimens of
20 body fluids or tissues and the agent or employee has a need
21 to know ~~such~~ that information: *Provided*, That ~~such~~ the
22 funeral director, agent or employee shall maintain the
23 confidentiality of ~~such~~ this information;

24 (5) Licensed ~~medical personnel~~ health care providers or
25 appropriate health ~~care~~ facility personnel providing care to
26 the subject of the test: ~~when knowledge of the test results is~~
27 ~~necessary or useful to provide appropriate care or treatment,~~
28 ~~in an appropriate manner~~: *Provided*, That such personnel
29 shall maintain the confidentiality of ~~such~~ the test results and
30 may redisclose the results only for a permitted purpose or as
31 permitted by law. The entry on a patient's chart of an HIV-
32 related illness by the attending or other treating physician or
33 other health care provider shall not constitute a breach of
34 confidentiality requirements imposed by this article;

35 (6) The ~~bureau~~ Bureau or the ~~centers for disease control~~
36 Centers for Disease Control and Prevention of the United
37 States Public Health Service in accordance with reporting
38 requirements for HIV and a diagnosed case of AIDS, or a
39 related condition;

40 (7) A health facility or health care provider which pro-
41 cures, processes, distributes or uses: (A) A human body part
42 from a deceased person with respect to medical information
43 regarding that person; (B) semen provided prior to the
44 effective date of this article for the purpose of artificial
45 insemination; (C) blood or blood products for transfusion or
46 injection; or (D) human body parts for transplant with
47 respect to medical information regarding the donor or
48 recipient;

49 (8) Health facility staff committees or accreditation or
50 oversight review organizations which are conducting
51 program monitoring, program evaluation or service reviews
52 so long as any identity remains anonymous; ~~and~~

53 (9) Claims management personnel employed by or associ-
54 ated with an insurer, health care service contractor, health
55 maintenance organization, self-funded health plan, state-
56 administered health care claims payer or any other payer of
57 health care claims, where the disclosure is to be used solely
58 for the prompt and accurate evaluation and payment of
59 medical or related claims. Information released under this
60 subsection is confidential and may not be released or

61 available to persons who are not involved in handling or
62 determining medical claims payment;

63 (10) Persons, health care providers or health facilities
64 engaging in or providing for the exchange of protected
65 health information among the same in order to provide
66 health care services to the patient, including, but not limited
67 to, disclosure through a health information exchange,
68 disclosure and exchange within health care facilities, and
69 disclosure for a permitted purpose, including disclosure to a
70 legally authorized public health authority; and

71 ~~(9)~~ (11) A person allowed access to ~~said~~ the record by a
72 court order ~~which~~ that is issued in compliance with the
73 following provisions:

74 (i) No court of this state may issue ~~such~~ the order unless
75 the court finds that the person seeking the test results has
76 demonstrated a compelling need for the test results which
77 cannot be accommodated by other means. In assessing
78 compelling need, the court shall weigh the need for disclo-
79 sure against the privacy interest of the test subject and the
80 public interest;

81 (ii) Pleadings pertaining to disclosure of test results shall
82 substitute a pseudonym for the true name of the test subject

83 of the test. The disclosure to the parties of the test subject's
84 true name shall be communicated confidentially in docu-
85 ments not filed with the court;

86 (iii) Before granting any such order, the court shall, if
87 possible, provide the individual whose test result is in
88 question with notice and a reasonable opportunity to
89 participate in the proceedings if he or she is not already a
90 party;

91 (iv) Court proceedings as to disclosure of test results shall
92 be conducted in camera unless the subject of the test agrees
93 to a hearing in open court or unless the court determines that
94 the public hearing is necessary to the public interest and the
95 proper administration of justice; and

96 (v) Upon the issuance of an order to disclose test results,
97 the court shall impose appropriate safeguards against
98 unauthorized disclosure, which shall specify the person who
99 may have access to the information, the purposes for which
100 the information may be used and appropriate prohibitions on
101 future disclosure.

102 (b) No person to whom the results of an HIV-related test
103 have been disclosed pursuant to subsection (a) of this section

104 may disclose the test results to another person except as
105 authorized by said subsection.

106 ~~(c) Whenever disclosure is made pursuant to this section,~~
107 ~~except when such disclosure is made to persons in accor-~~
108 ~~dance with subdivisions (1) and (6), subsection (a) of this~~
109 ~~section, it shall be accompanied by a statement in writing~~
110 ~~which includes the following or substantially similar~~
111 ~~language: "This information has been disclosed to you from~~
112 ~~records whose confidentiality is protected by state law. State~~
113 ~~law prohibits you from making any further disclosure of the~~
114 ~~information without the specific written consent of the~~
115 ~~person to whom it pertains, or as otherwise permitted by law.~~
116 ~~A general authorization for the release of medical or other~~
117 ~~information is NOT sufficient for this purpose."~~

118 ~~(d)~~ (c) Notwithstanding the provisions set forth in subsec-
119 tions (a) through (c) of this section, the use of HIV test results
120 to inform individuals named or identified as spouses, sex
121 partners or contacts, or persons who have shared needles
122 that they may be at risk of having acquired the HIV infection
123 as a result of possible exchange of body fluids, is permitted:
124 *Provided*, That the ~~bureau~~ Bureau shall make a good faith
125 effort to inform spouses, sex partners, contacts or persons

126 who have shared needles that they may be at risk of having
127 acquired the HIV infection as a result of possible exchange
128 of body fluids: *Provided, however,* That the ~~bureau~~ Bureau
129 ~~shall have~~ has no notification obligations when the ~~bureau~~
130 Bureau determines that there has been no likely exposure of
131 ~~such~~ these persons to HIV from the infected test subject
132 within the ten-year period immediately prior to the diagnosis
133 of the infection. The name or identity of the person whose
134 HIV test result was positive is to remain confidential.
135 Spouses, contacts, or sex partners or persons who have
136 shared needles may be tested anonymously at the State
137 Bureau ~~of~~ for public Health's designated test sites, or at their
138 own expense by a health care provider or an approved
139 laboratory of their choice confidentially should the test be
140 positive. A cause of action ~~will~~ may not arise against the
141 ~~bureau~~ Bureau, a physician or other health care provider
142 from any such notification.

143 (e) (d) There is no duty on the part of the physician or
144 health care provider to notify the spouse or other sexual
145 partner of, or persons who have shared needles with, an
146 infected individual of their HIV infection and a cause of
147 action ~~will~~ may not arise from any failure to make such

148 notification. However, if contact is not made, the ~~bureau~~
149 Bureau will be so notified.

(NOTE: The purpose of this bill is to revise the West Virginia HIV testing statute to conform with the most recent recommendations from the Centers for Disease Control and Prevention.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)