

SENATE BILL REPORT

ESSB 5457

AS PASSED SENATE, FEBRUARY 17, 1992

Brief Description: Prohibiting certain public contact and requiring notification of employers by persons infected with HIV.

SPONSORS: Senate Committee on Health & Long-Term Care (originally sponsored by Senators L. Smith, Rasmussen, West, Stratton, Johnson, Owen, Saling, McCaslin, Bailey, Metcalf, Craswell, Amondson, Hayner, Thorsness and Cantu).

Majority Report: Do pass as amended.
Signed by Senators West, Chairman; L. Smith, Vice Chairman; Amondson, and Newhouse.

Minority Report: Do not pass as amended.
Signed by Senators M. Kreidler and Niemi.

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

Staff: Sarena Seifer (786-7417)

Hearing Dates: February 21, 1991; March 6, 1991; January 23, 1992; January 31, 1992

BACKGROUND:

Current state law prohibits discrimination in employment on the basis of any physical or sensory handicap, including HIV infection, unless it can be shown that the absence of the handicap represents a bona fide occupational qualification of the job in question.

The law says, "The absence of HIV infection as a bona fide occupational qualification exists when performance of a particular job can be shown to present a significant risk, as defined by the board of health by rule, of transmitting HIV infection to other persons, and there exists no means of eliminating the risk by restructuring the job."

The board of health has defined "significant risk" for HIV infection for the purposes of determining a bona fide occupational qualification as "... a job qualification which requires person-to-person contact likely to result in direct introduction of blood in the eye, an open cut or wound, or other interruption of the epidermis, when (a) no adequate barrier protection is practical; and (b) determined only on case-by-case basis consistent with RCW 49.60.180."

There is controversy as to whether the definition of "significant risk" is adequate in light of recent findings by

the federal centers for disease control that HIV transmission has occurred in a health care setting where recommended barrier protections may have failed.

The federal centers for disease control now estimate that from 13 to 128 patients in the United States may have been infected with HIV as a result of accidental exposure to the body fluids of health care providers, in situations where barrier protections may have failed.

SUMMARY:

If the absence of HIV infection is a bona fide occupational qualification for the job in question, any person who knows or should have known that they are infected with HIV must notify their employer or the principal administrator of any health care facility in which they might practice.

No person may engage in any contact with the public in the course of employment that is determined by the board of health to present a significant risk of transmitting HIV infection to other persons without first obtaining the informed, written consent of that person or their guardian. Any person who engages in contact or fails to obtain written consent must pay for HIV testing and counseling to determine whether persons they have exposed have become infected with HIV.

Failure to comply with the terms of the act is unprofessional conduct for health care professionals licensed under the Uniform Disciplinary Act.

The Board of Health must adopt rules defining "significant risk" to include procedures involving digital palpitation of a needle tip in a body cavity or the simultaneous presence of a health care worker's fingers and a need or other sharp instrument or object in a poorly visualized or highly confined anatomic site and any contact that the federal Centers for Disease Control have determined to result in an actual HIV transmission, including invasive medical procedures in which recommended infection control procedures may have failed.

Any person who knows or should have known they are infected with HIV must notify persons the board of health determines may have been at significant risk of exposure to the infected person's body fluids in the course of the infected person's employment.

A health care provider who, within his or her scope of practice may order blood tests for diagnostic purposes, may perform an HIV test on a patient if the provider determines that the HIV test is medically appropriate and necessary to (a) protect the safety of any person who has been placed at significant risk of exposure to HIV during the course of providing health care or support services for the patient, or (b) facilitate accurate diagnosis and treatment of the patient.

Appropriation: none

Revenue: none

Fiscal Note: available

Effective Date: The bill contains an emergency clause and takes effect immediately.

TESTIMONY FOR:

Data has been collected which demonstrates the hardness of the HIV virus and possible transmission from unsterilized dental and other instruments. The public's fear and distrust of health care providers is growing. HIV-positive health care workers who do not disclose their HIV status to their patients are putting their patients at risk and violating the Hippocratic Oath to "do no harm." Universal infection control procedures do not completely eliminate the risk of HIV transmission.

TESTIMONY AGAINST:

The legislation wrongly implies that health care worker to patient HIV transmission is a common and well-documented problem. The federal Centers for Disease Control have only identified five patients who may have become HIV infected from their dentists, and the mode of transmission in the cases is unclear. The most recent CDC recommendations specifically emphasize adherence to universal infection control procedures and advocates against mandatory testing of health care workers. The bill will lead to mandatory testing of health care workers, increase health care costs and violate an individual's right to privacy. The bill will promote unjustified fear and discrimination of HIV positive persons, and will do little or nothing to control the spread of the disease.

TESTIFIED: Eleanora Ballasiotes (pro); Dr. Kathleen Skriner (pro); Lisa Hoffman, State Board of Health (con); Dr. Ann Marie Kimball, Department of Health (con); Dr. Ruth Wood, Seattle-King County Health Department (con); Linda Hull, Washington State Dental Association (con); Lis Gildemeister, Washington State Nurses Association (con); Robb Manual, Washington State Hospital Association (con); Susie Tracey, Washington State Medical Association (con); Ken Bertrand, Group Health Cooperative (con); Sally McQuown (con); Kathrine Sokolik (con); Daniel Dickson (con); Melanie Stewart (con); Sharon Case (con)