

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S

6

SENATE BILL 282\*

Human Resources Committee Substitute Adopted 5/3/89

Judiciary III Committee Substitute #2 Adopted 5/5/89

Fourth Edition Engrossed 5/11/89

House Committee Substitute Favorable 7/21/89

Sixth Edition Engrossed 7/26/89

Short Title: Communicable Disease Law Change.

(Public)

Sponsors:

Referred to:

February 27, 1989

A BILL TO BE ENTITLED

AN ACT TO AMEND THE COMMUNICABLE DISEASE LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-148 reads as rewritten:

"§ 130A-148. Laboratory tests for AIDS virus infection.

(a) For the protection of the public health, the Commission shall adopt rules establishing standards for the certification of laboratories to perform tests for Acquired Immune Deficiency Syndrome (AIDS) virus infection. The rules shall address, but not be limited to, proficiency testing, record maintenance, adequate staffing and confirmatory testing. Tests for AIDS virus infection shall be performed only by laboratories certified pursuant to this subsection and only on specimens submitted by a physician licensed to practice medicine. This subsection shall not apply to testing performed solely for research purposes under the approval of an institutional review board.

(b) Prior to obtaining consent for donation of blood, semen, tissue or organs, a facility or institution seeking to obtain blood, tissue, semen or organs for transfusion, implantation, transplantation or administration shall provide the potential donor with information about AIDS virus transmission, and information about who should not donate.

1 (c) No blood or semen may be transfused or administered when blood from the  
2 donor has not been tested or has tested positive for AIDS virus infection by a standard  
3 laboratory test.

4 (d) No tissue or organs may be transplanted or implanted when blood from the  
5 donor has not been tested or has tested positive for AIDS virus infection by a standard  
6 laboratory test unless consent is obtained from the recipient, or from the recipient's  
7 guardian or a responsible adult relative of the recipient if the recipient is not competent  
8 to give such consent.

9 (e) Any facility or institution that obtains or transfuses, implants, transplants, or  
10 administers blood, tissue, semen, or organs shall be immune from civil or criminal  
11 liability that otherwise might be incurred or imposed for transmission of AIDS virus  
12 infection if the provisions specified in subsections (b), (c), and (d) of this section have  
13 been complied with.

14 (f) Specimens may be tested for AIDS virus infection for research or  
15 epidemiologic purposes without consent of the person from whom the specimen is  
16 obtained if all personal identifying information is removed from the specimen prior to  
17 testing.

18 (g) Persons tested for AIDS virus infection shall be notified of test results and  
19 counseled appropriately. This subsection shall not apply to tests performed by or for  
20 entities governed by Article 34 of G.S. Chapter 58, the Insurance Information and  
21 Privacy Protection Act, provided that said entities comply with the notice requirements  
22 thereof.

23 (h) The Commission may authorize or require laboratory tests for AIDS virus  
24 infection when necessary to protect the public health.

25 A test for AIDS virus infection may also be performed upon any person solely by  
26 order of a physician licensed to practice medicine in North Carolina who is rendering  
27 medical services to that person when, in the reasonable medical judgment of the  
28 physician, the test is necessary for the appropriate treatment of the person; however, the  
29 person shall be informed that a test for AIDS virus infection is to be conducted, and  
30 shall be given clear opportunity to refuse to submit to the test prior to it being  
31 conducted, and further if informed consent is not obtained, the test may not be  
32 performed. A physician may order a test for AIDS virus infection without the informed  
33 consent of the person tested if the person is incapable of providing or incompetent to  
34 provide such consent, others authorized to give consent for the person are not available,  
35 and testing is necessary for appropriate diagnosis or care of the person.

36 An unemancipated minor may be tested for AIDS virus infection without the consent  
37 of the parent or legal guardian of the minor when the parent or guardian has refused to  
38 consent to such testing and there is reasonable suspicion that the minor has AIDS virus  
39 or HIV infection or that the child has been sexually abused.

40 (i) Except as provided in this section, no test for AIDS virus infection shall be  
41 required, performed or used to determine suitability for continued employment, housing  
42 or public services, or for the use of places of public accommodation as defined in G.S.  
43 168A-3(8), or public transportation.

1 Further it shall be unlawful to discriminate against any person having AIDS virus or  
2 HIV infection on account of that infection in determining suitability for continued  
3 employment, housing, or public services, or for the use of places of public  
4 accommodation, as defined in G.S. 168A-3(8), or public transportation.

5 Any person aggrieved by an act or discriminatory practice prohibited by this  
6 subsection relating to housing shall be entitled to institute a civil action pursuant to G.S.  
7 41A-7 of the State Fair Housing Act. Any person aggrieved by an act or discriminatory  
8 practice prohibited by this subsection other than one relating to housing may bring a  
9 civil action to enforce rights granted or protected by this subsection.

10 The action shall be commenced in superior court in the county where the alleged  
11 discriminatory practice or prohibited conduct occurred or where the plaintiff or  
12 defendant resides. Such action shall be tried to the court without a jury. Any relief  
13 granted by the court shall be limited to declaratory and injunctive relief, including  
14 orders to hire or reinstate an aggrieved person or admit such person to a labor  
15 organization.

16 In a civil action brought to enforce provisions of this subsection relating to  
17 employment, the court may award back pay. Any such back pay liability shall not  
18 accrue from a date more than two years prior to the filing of an action under this  
19 subsection. Interim earnings or amounts earnable with reasonable diligence by the  
20 aggrieved person shall operate to reduce the back pay otherwise allowable. In any civil  
21 action brought under this subsection, the court, in its discretion, may award reasonable  
22 attorney's fees to the substantially prevailing party as a part of costs.

23 A civil action brought pursuant to this subsection shall be commenced within 180  
24 days after the date on which the aggrieved person became aware or, with reasonable  
25 diligence, should have become aware of the alleged discriminatory practice or  
26 prohibited conduct.

27 Nothing in this section shall be construed so as to prohibit an employer from:

- 28 (1) Requiring a test for AIDS virus infection for job applicants in  
29 preemployment medical examinations required by the employer;
- 30 (2) Denying employment to a job applicant based solely on a confirmed  
31 positive test for AIDS virus infection;
- 32 (3) Including a test for AIDS virus infection performed in the course of an  
33 annual medical examination routinely required of all employees by the  
34 employer; or
- 35 (4) Taking the appropriate employment action, including reassignment or  
36 termination of employment, if the continuation by the employee who  
37 has AIDS virus or HIV infection of his work tasks would pose a  
38 significant risk to the health of the employee, coworkers, or the public,  
39 or if the employee is unable to perform the normally assigned duties of  
40 the job.

41 (j) It shall not be unlawful for a licensed health care provider or facility to:

- 42 (1) Treat a person who has AIDS virus or HIV infection differently from  
43 persons who do not have that infection when such treatment is  
44 appropriate to protect the health care provider or employees of the

1 provider or employees of the facility while providing appropriate care  
2 for the person who has the AIDS virus or HIV infection; or  
3 (2) Refer a person who has AIDS virus or HIV infection to another  
4 licensed health care provider or facility when such referral is for the  
5 purpose of providing more appropriate treatment for the person with  
6 AIDS virus or HIV infection."

7 Sec. 2. Restaurants issued a permit pursuant to G.S. 130A-248 shall be  
8 exempted from G.S. 130A-148(i), as it applies to suitability for continued employment,  
9 until July 1, 1991.

10 Sec. 3. G.S. 130A-135 reads as rewritten:

11 "**§ 130A-135. Physicians to report.**

12 A physician licensed to practice medicine who has reason to suspect that a person  
13 about whom the physician has been consulted professionally has a communicable  
14 disease or communicable condition declared by the Commission to be reported, shall  
15 report information required by the Commission to the local health director of the county  
16 or district in which the physician is consulted. The Commission shall declare confirmed  
17 HIV infection to be a reportable communicable condition."

18 Sec. 4. A new section is added to Chapter 130A of the General Statutes to  
19 read:

20 "**§ 130A-395. Handling and transportation of bodies.**

21 (a) It shall be the duty of the physician licensed to practice medicine under  
22 Chapter 90 attending any person who dies and is known to have smallpox, plague, HIV  
23 infection, hepatitis B infection, rabies, or Jakob-Creutzfeldt to provide written  
24 notification to all individuals handling the body of the proper precautions to prevent  
25 infection. This written notification shall be provided to funeral service personnel at the  
26 time the body is removed from any hospital, nursing home, or other health care facility.  
27 When the patient dies in a location other than a health care facility, the attending  
28 physician shall notify the funeral service personnel verbally of the precautions required  
29 in subsections (b) and (c) as soon as the physician becomes aware of the death.

30 (b) The body of a person who died from smallpox or plague shall not be  
31 embalmed. The body shall be enclosed in a strong, tightly sealed outer case which will  
32 prevent leakage or escape of odors as soon as possible after death and before the body is  
33 removed from the hospital room, home, building, or other premises where the death  
34 occurred. This case shall not be reopened except with the consent of the local health  
35 director.

36 (c) Persons handling bodies of persons who died and were known to have HIV  
37 infection, hepatitis B infection, Jakob-Creutzfeldt, or rabies shall be provided written  
38 notification to observe blood and body fluid precautions."

39 Sec. 5. This act shall become effective October 1, 1989.