

SENATE BILL REPORT

SB 5457

AS REPORTED BY COMMITTEE ON HEALTH & LONG-TERM CARE,
MARCH 6, 1991

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

SPONSORS: Senators L. Smith, Rasmussen, West, Stratton, Johnson, Owen, Saling, McCaslin, Bailey, Metcalf, Craswell, Amondson, Hayner, Thorsness and Cantu.

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

Majority Report: That Substitute Senate Bill No. 5457 be substituted therefor, and the substitute bill do pass.

Signed by Senators West, Chairman; L. Smith, Vice Chairman; Amondson, and Johnson.

Minority Report: Do not pass.

Signed by Senators L. Kreidler, Niemi, and Wojahn.

Staff: Don Sloma (786-7414)

Hearing Dates: February 21, 1991; March 6, 1991

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:

It is a gross misdemeanor for any person who knows they are infected with HIV to continue 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 to other persons, or to fail to provide notification of their infection to their employer and such other persons as the board determines in rule may have been at significant risk of exposure to the infected person's body fluids in the course of the infected person's employment.

Infected persons who notify others as provided in the act, must pay for HIV testing and counseling if the person notified requests it.

The board of health must define "significant risk" to include any contact that the federal centers for disease control have found to result in an actual HIV transmission, including invasive medical procedures in which recommended infection control procedures may have failed.

A violation of the act is unprofessional conduct under the Uniform Disciplinary Act for licensed health professions.

Any notification or other action required by the act is not an unfair practice when evaluating claims of discrimination related to HIV infection under.

EFFECT OF PROPOSED SUBSTITUTE:

The original bill is replaced by the following:

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 define "significant risk" to include any contact the federal centers for disease control have found to result in an actual HIV transmission, including invasive medical procedures where 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 their 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 protect the safety of any person providing health care or support services for the patient.

An emergency is declared and the act takes effect immediately.

Appropriation: none

Revenue: none

Fiscal Note: available

TESTIMONY FOR:

The federal centers for disease control (CDC) have documented several cases of HIV transmission from health care providers to patients. They estimate that as many as 128 persons may have been infected with HIV as a result of exposure to the body fluids of health care providers during invasive medical procedures. The infection of even one patient by this means is unacceptable, because it will result in death.

There is no reason to wait for the outcome of CDC deliberations. The legislation allows for changes in the definition of what constitutes "significant risk" based on new determinations the CDC may make. The Washington Legislature has set national trends in AIDS policy in years past without waiting for guidance from federal agencies. We should do it again with this measure. If national policy develops in a different direction, or if new information becomes available, the Legislature can revisit this issue.

This measure is needed for the safety and security of patients and health care providers, and to help stop the spread of HIV infection. It will not reduce access to health care for HIV positive persons, nor will it create a disincentive for health care workers to learn their HIV status. The majority of health care providers will adhere to their professional ethics which require them to refrain from contact with patients which

will spread diseases, and to provide needed treatment to all persons, including those infected with HIV.

The American Medical Association and the American Dental Association have adopted professional guidelines which suggest that HIV positive practitioners refrain from performing invasive procedures. Some hospitals are considering adopting similar policies. Patients and health care providers should have the right to know each other's HIV status. Only then can they make the choices regarding their professional conduct and their health care they should have the right to make.

TESTIMONY AGAINST:

The bill's requirements will create a disincentive for health care workers to learn their own HIV status, since they will only be required to obtain patients' informed consent if they know or should have known they are HIV positive. In addition, the bill will reduce access to health care for HIV positive people because health care providers will fear the potential loss of their livelihoods, if they become HIV positive. The CDC is presently developing national policy on this subject. The Washington Legislature should wait until that group has completed their deliberations before attempting to set state policy.

The federal centers for disease control (CDC) estimates of HIV transmissions from health care workers to their patients are preliminary. They range from a low of only three documented cases to a high estimate of 128. The methods used in the estimates have caused controversy in the professional community. CDC is presently considering these preliminary estimates, and has received much testimony suggesting that the estimating methods are flawed.

It is not clear that the three documented transmissions in the dentist's office were the result of the failure of recommended infection control procedures or whether they were the result of a failure to use those procedures.

In addition, even if the estimate of 128 health care worker to patient HIV infections is correct, it does not represent a large enough risk to warrant this legislation. CDC's estimates of health care worker to patient HIV transmissions are far below the number of documented cases of hepatitis B infection in similar circumstances. Hepatitis B infections received in health care settings have been fatal in more than 128 cases within the past year, and no similar statutes exist.

The legislation's implication that health care worker to patient HIV transmission is a significant risk will promote unjustified fear and discrimination. This will do little or nothing to control the spread of the disease, and will work an unnecessary hardship on persons with HIV.

TESTIFIED: Senator Linda Smith (pro); Senator A.L. "Slim" Rasmussen (pro); Marcia Holland, Chiropractic Associates of Washington (pro); Don Moreland, Co-Chair, Privacy Fund (con);

Larry Dahl (con); Terence Gayle, M.D., Harborview Medical Center (con); Kathleen Skrinar, M.D. (pro); Bill Lafferty, DOH (con); Nancy Campbell, Northwest AIDS Foundation (con); Robb Menaul, WA Hospital Assn. (con); Kelly Scott, AIDS Watch (con); Susie Tracy, WSMA (con); Patty Joynes, WSMA (con); Eleanor Ballasiotes (pro); Joan Gaumer, Privacy Lobby; Linda Christopherson, WSDA (con)