

AMENDED IN ASSEMBLY JUNE 26, 2003

AMENDED IN ASSEMBLY JUNE 19, 2003

AMENDED IN SENATE MAY 12, 2003

**SENATE BILL**

**No. 1081**

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**Introduced by Committee on Health and Human Services  
(Senators Ortiz (Chair), Alarcon, Battin, Chesbro, Escutia,  
Figueroa, Florez, Kuehl, Romero, Vasconcellos, and Vincent)  
(Coauthor: Senator Aanestad)**

April 3, 2003

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An act to amend Sections 1603.1, 1603.2, 1603.3, 1603.4, 1621.5, and 120990 of the Health and Safety Code, relating to human blood.

LEGISLATIVE COUNSEL'S DIGEST

SB 1081, as amended, Committee on Health and Human Services. Human blood.

(1) Existing law requires any person engaged in the production of human whole blood or human whole blood derivatives to be licensed by the State Department of Health Services. Existing law also contains various provisions relating to consent to, and the disclosure of results of, testing for antibodies to the human immunodeficiency virus (HIV), the probable causative agent of acquired immune deficiency syndrome (AIDS), and the presence of viral hepatitis.

Existing law requires each blood bank or plasma center to notify the department and county health officer, as specified, if the presence of viral hepatitis, or the antigen thereof, is found in the blood tested, and in these cases, to provide additional information, as prescribed. Existing law also requires a physician to report to the department and the county health officer certain information regarding all carriers of

viral hepatitis under his or her treatment, and requires a hospital to report to the department and to the county health officer certain information regarding all confirmed cases of AIDS carriers and all carriers of viral hepatitis hospitalized for treatment of viral hepatitis or AIDS.

~~Existing law further requires the department and county health officers to perform various duties after cases of AIDS or viral hepatitis have been reported.~~

*This bill would instead require a physician, hospital, or other health care provider to report to local health officers all AIDS cases, HIV infections, and viral hepatitis infections, as prescribed.*

~~It would delete the above requirements as requirement that the report be made to the department, would require that the reports be made to local health officers rather than county health officers, and would expand these reporting requirements to include HIV. By imposing new duties on local health officers, this bill would create a state-mandated local program.~~

(2) Existing law requires the county health officer to investigate all transfusion-associated hepatitis cases and transfusion-associated AIDS cases and to trace the sources of human whole blood that was transfused.

This bill would instead require the local health officer, upon receipt of a report concerning any transfusion-associated hepatitis or transfusion-associated HIV or AIDS case, to identify which blood bank or plasma center is the source of the infectious blood or blood components and to report this fact to the blood bank or plasma center that issued the blood or blood components. It would require the blood bank or plasma center to undertake an investigation to determine the donor source of the infectious blood or blood components. By expanding the duties of local health officers, this bill would impose a state-mandated local program.

(3) Existing law requires the department to compile a list of carrier donors, possible carrier donors, and carriers of viral hepatitis and persons who test reactive for HIV and to distribute that list, known as the Donor Deferral Register, to blood banks and plasma centers, as specified. Existing law requires blood banks and plasma centers, after a confirmation test, to report information to the department to be included in the Donor Deferral Register, as specified. Existing law also requires the department, if possible, to contact carrier donors to inform them that they may be carriers of viral hepatitis and should not make blood donations, and to suggest appropriate treatment alternatives.



*Existing law prohibits blood banks from receiving human whole blood from a person listed as a carrier donor or carrier of viral hepatitis on a list distributed by the department.*

This bill would delete these requirements.

(4) *Existing law requires blood banks to require a photographic identification, as specified, from all donors of human whole blood who receive payment, as defined, in return for the donation of that blood.*

*This bill would also apply these requirements to plasma centers, and would expand the category of donors required to present photographic identification to include donors of blood components.*

(5) The bill would also make various technical, nonsubstantive, and conforming changes.

~~(5)~~

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1603.1 of the Health and Safety Code  
2 is amended to read:  
3 1603.1. (a) Except as provided in this subdivision, no blood  
4 or blood components shall be used in vivo for humans in this state,  
5 unless the blood or blood components have been tested and found  
6 nonreactive for HIV or the blood or blood components are used for  
7 research or vaccination programs pursuant to an informed consent.  
8 Additional exceptions to the requirement of this subdivision are  
9 as follows:  
10 (1) Blood or blood components released for transfusion in  
11 emergency circumstances, as determined by the department.



1 (2) Blood or blood components used for autologous purposes.

2 (b) Blood banks and plasma centers shall make laboratory tests  
3 of all human whole blood and blood components received to detect  
4 the presence of viral hepatitis and HIV in the manner specified in  
5 Section 1603.3. If the blood bank or plasma center finds the  
6 presence of viral hepatitis, or an antigen thereof, in the blood or  
7 blood components tested, it shall report that finding, the date of the  
8 human whole blood or blood components donation, the name,  
9 address, and social security number of the person who donated the  
10 blood or blood components, and the name and address of the blood  
11 bank or plasma center that received the human whole blood or  
12 blood components from the person and any additional information  
13 required by the department, to the local health officer within 72  
14 hours of the confirmation of the presence of viral hepatitis, or an  
15 antigen thereof, in the blood or blood components tested.

16 ~~(c) Within the timeframes established by Title 17 of the~~  
17 ~~California Code of Regulations, a physician shall report to the~~  
18 ~~local health officer the name, date of birth, address, and social~~  
19 ~~security number of all cases of AIDS carriers of viral hepatitis~~  
20 ~~under his or her treatment, the type of viral hepatitis contracted, if~~  
21 ~~known, and any additional information required by the department~~  
22 ~~and shall report all transfusion-associated hepatitis and~~  
23 ~~transfusion-associated AIDS cases to the local health officer for~~  
24 ~~investigation. A physician shall report all confirmed cases of HIV~~  
25 ~~and all transfusion-associated cases of HIV under his or her~~  
26 ~~treatment to the local health officer pursuant to Title 17 of the~~  
27 ~~California Code of Regulations, in accordance with regulations for~~  
28 ~~reporting HIV by nonname code.~~

29 ~~(d) Within the timeframes established by Title 17 of the~~  
30 ~~California Code of Regulations, a hospital shall report to the local~~  
31 ~~health officer the name, date of birth, address, and social security~~  
32 ~~number of all cases of AIDS, as determined by a person~~  
33 ~~responsible for the care and treatment of a person with AIDS, and~~  
34 ~~all carriers of viral hepatitis hospitalized for treatment of viral~~  
35 ~~hepatitis, the name of the hospital, the date of hospitalization, the~~  
36 ~~type of viral hepatitis contracted, if known, and any additional~~  
37 ~~information required by the department and shall report all~~  
38 ~~transfusion-associated hepatitis and all transfusion-associated~~  
39 ~~AIDS cases, as determined by a person responsible for the care and~~  
40 ~~treatment of a person with AIDS, to the local health officer for~~



1 ~~investigation. A hospital shall report all confirmed cases of HIV~~  
2 ~~and all transfusion-associated cases of HIV, as determined by a~~  
3 ~~person responsible for the care and treatment of a person with HIV,~~  
4 ~~to the local health officer pursuant to Title 17 of the California~~  
5 ~~Code of Regulations, regarding in accordance with regulations for~~  
6 ~~reporting HIV by nonname code.~~

7 ~~(e)–~~

8 *(c) A physician, hospital, or other health care provider shall*  
9 *report all AIDS cases, HIV infections, and viral hepatitis*  
10 *infections, including transfusion-associated cases or infections, to*  
11 *the local health officer with the information required, and within*  
12 *the time frames established by the department, pursuant to Title 17*  
13 *of the California Code of Regulations.*

14 (d) Upon receipt of a report concerning any  
15 transfusion-associated hepatitis or transfusion-associated HIV or  
16 AIDS cases, the local health officer shall identify which blood  
17 bank or plasma center is the source of the infectious blood or blood  
18 components and shall report this fact to the blood bank or plasma  
19 center that issued the blood or blood components. The blood bank  
20 or plasma center shall undertake an investigation to determine the  
21 donor source of the infectious blood or blood components.

22 ~~(f)–~~

23 (e) Local health officials shall contact all persons who have  
24 confirmed cases of HIV or AIDS, as determined by a person  
25 responsible for the care and treatment of the person with HIV or  
26 AIDS, to suggest appropriate treatment alternatives and for the  
27 purposes of epidemiological studies and followup.

28 ~~(g)–~~

29 (f) The department may adopt regulations governing the  
30 procedures in this section as it deems necessary to protect the  
31 public health and safety.

32 ~~(h)–~~

33 (g) “Plasma center,” as used in this chapter, means any place  
34 where the process of plasmapheresis is conducted, as defined in  
35 Section 1025 of Title 17 of the California Code of Regulations and  
36 includes a place where leukopheresis or platelet pheresis, or both,  
37 is conducted.

38 ~~(i)–~~

39 (h) “AIDS,” as used in this chapter, means acquired immune  
40 deficiency syndrome.



1 ~~(j)~~  
2 (i) “HIV,” as used in this chapter, means human  
3 immunodeficiency virus.

4 ~~(k)~~  
5 (j) “Blood components,” as used in this chapter, means  
6 preparations separated from single units of whole blood or  
7 prepared for hemapheresis and intended for use as final products  
8 for transfusions.

9 ~~(l)~~  
10 (k) A local health officer may disclose to a blood bank or  
11 plasma center, on a confidential basis, whether blood or blood  
12 components previously transfused may have been donated by a  
13 person infected with HIV, in order to implement the blood bank’s  
14 or plasma center’s program to notify a recipient of blood or blood  
15 components that might have transmitted HIV. The blood bank or  
16 plasma center may not disclose information that would identify a  
17 donor to which this subdivision applies and shall destroy  
18 information communicated to it as authorized by this subdivision  
19 immediately after reviewing its records as necessary to implement  
20 this program.

21 SEC. 2. Section 1603.2 of the Health and Safety Code is  
22 amended to read:

23 1603.2. (a) Each blood bank or plasma center shall require as  
24 identification either a photographic driver’s license or other  
25 photographic identification that is issued by the Department of  
26 Motor Vehicles, pursuant to Division 6 (commencing with Section  
27 12500) of the Vehicle Code, from all donors of human whole blood  
28 or blood components ~~who are volunteers or~~ who receive payment  
29 in return for the donation of that blood or blood components.

30 (b) For the purposes of this section, “payment” means the  
31 transfer by a blood bank or plasma center to any person of money  
32 or any other valuable consideration that can be converted to money  
33 by the recipient, except that payment shall not include any of the  
34 following:

35 (1) Cancellation or refund of the nonreplacement fees or  
36 related blood or blood components transfusion charges.

37 (2) Blood assurance benefits to a person as a result of a blood  
38 or blood components donation to a donor club or blood assurance  
39 program.



1 (3) Time away from employment granted by an employer to an  
2 employee in order to donate blood or blood components.

3 SEC. 3. Section 1603.3 of the Health and Safety Code is  
4 amended to read:

5 1603.3. (a) Prior to a donation of blood or blood components,  
6 each donor shall be notified in writing of, and shall have signed a  
7 written statement confirming the notification of, all of the  
8 following:

9 (1) That the blood or blood components shall be tested for  
10 evidence of antibodies to HIV.

11 (2) That the donor shall be notified of the test results in  
12 accordance with the requirements described in subdivision (c).

13 (3) That the donor blood or blood component that is found to  
14 have the antibodies shall not be used for transfusion.

15 (4) That blood or blood components shall not be donated for  
16 transfusion purposes by a person if the person may have reason to  
17 believe that he or she has been exposed to HIV or AIDS.

18 (5) That the donor is required to complete a health screening  
19 questionnaire to assist in the determination as to whether he or she  
20 may have been exposed to HIV or AIDS.

21 (b) A blood bank or plasma center shall incorporate voluntary  
22 means of self-deferral for donors. The means of self-deferral may  
23 include, but are not limited to, a form with checkoff boxes  
24 specifying that the blood or blood components *are* for research or  
25 test purposes only and a telephone callback system for donors to  
26 use in order to inform the blood bank or plasma center that blood  
27 or blood components donated should not be used for transfusion.  
28 The blood bank or plasma center shall inform the donor, in a  
29 manner that is understandable to the donor, that the self-deferral  
30 process is available and should be used if the donor has reason to  
31 believe that he or she is infected with HIV. The blood bank or  
32 plasma center shall also inform the donor that it is a felony  
33 pursuant to Section 1621.5 to donate blood if the donor knows that  
34 he or she has a diagnosis of AIDS or knows that he or she has tested  
35 ~~reactive to the etiologic agent of AIDS or to antibodies to that~~  
36 ~~agent.~~ *she has tested reactive to HIV.*

37 (c) Blood or blood components from any donor initially found  
38 to have serologic evidence of antibodies to HIV shall be retested  
39 for confirmation. Only if a further test confirms the conclusion of



1 the earlier test shall the donor be notified of a reactive result by the  
2 blood bank or plasma center.

3 The department shall develop permissive guidelines for blood  
4 banks and plasma centers on the method to be used to notify a  
5 donor of a test result.

6 (d) Each blood bank or plasma center operating in California  
7 shall prominently display at each of its collection sites a notice that  
8 provides the addresses and telephone numbers of sites, within the  
9 proximate area of the blood bank or plasma center, where  
10 anonymous HIV antibody testing provided pursuant to Chapter 3  
11 (commencing with Section 120885) of Part 4 of Division 105 may  
12 be administered without charge.

13 (e) The department may promulgate any additional regulations  
14 it deems necessary to enhance the safety of donated blood and  
15 blood components. The department may also promulgate  
16 regulations it deems necessary to safeguard the consistency and  
17 accuracy of HIV test results by requiring any confirmatory testing  
18 the department deems appropriate for the particular types of HIV  
19 tests that have yielded “reactive,” “positive,” “indeterminate,”  
20 or other similarly labeled results.

21 (f) Notwithstanding any other provision of law, no civil  
22 liability or criminal sanction shall be imposed for disclosure of test  
23 results to a local health officer when the disclosure is necessary to  
24 locate and notify a blood or blood components donor of a reactive  
25 result if reasonable efforts by the blood bank or plasma center to  
26 locate the donor have failed. Upon completion of the local health  
27 officer’s efforts to locate and notify a blood or blood components  
28 donor of a reactive result, all records obtained from the blood bank  
29 or plasma center pursuant to this subdivision, or maintained  
30 pursuant to this subdivision, including, but not limited to, any  
31 individual identifying information or test results, shall be  
32 expunged by the local health officer.

33 SEC. 4. Section 1603.4 of the Health and Safety Code is  
34 amended to read:

35 1603.4. (a) Notwithstanding Chapter 7 (commencing with  
36 Section 120975) of Part 4 of Division 105, or any other provision  
37 of law, no public entity or any private blood bank or plasma center  
38 shall be liable for an inadvertent, accidental, or otherwise  
39 unintentional disclosure of the results of an HIV test.



1 As used in this section, “public entity” includes, but is not  
2 limited to, any publicly owned or operated blood bank or plasma  
3 center, local health officer, and the department.

4 (b) Neither the department nor any blood bank or plasma  
5 center, including a blood bank or plasma center owned or operated  
6 by a public entity, or local health officer shall be held liable for any  
7 damage resulting from the notification of test results, as set forth  
8 in paragraph (2) of subdivision (a) of, or in subdivision (c) of,  
9 Section 1603.3.

10 SEC. 5. Section 1621.5 of the Health and Safety Code is  
11 amended to read:

12 1621.5. (a) It is a felony punishable by imprisonment in the  
13 state prison for two, four, or six years, for any person to donate  
14 blood, body organs or other tissue, semen to any medical center or  
15 semen bank that receives semen for purposes of artificial  
16 insemination, or breast milk to any medical center or breast milk  
17 bank that receives breast milk for purposes of distribution, whether  
18 he or she is a paid or a volunteer donor, who knows that he or she  
19 has acquired immune deficiency syndrome, as diagnosed by a  
20 physician and surgeon, or who knows that he or she has tested  
21 ~~reactive to the etiologic agent of AIDS or to the antibodies to that~~  
22 ~~agent~~ *reactive to HIV*. This section shall not apply to any person  
23 who is mentally incompetent or who self-defers his or her blood  
24 at a blood bank or plasma center pursuant to subdivision (b) of  
25 Section 1603.3 or who donates his or her blood for purposes of an  
26 autologous donation.

27 (b) In a criminal investigation for a violation of this section, no  
28 person shall disclose the results of a blood test to detect the  
29 etiologic agent of AIDS or antibodies to that agent to any officer,  
30 employee, or agent of a state or local agency or department unless  
31 the test results are disclosed as otherwise required by law pursuant  
32 to any one of the following:

33 (1) A search warrant issued pursuant to Section 1524 of the  
34 Penal Code.

35 (2) A judicial subpoena or subpoena duces tecum issued and  
36 served in compliance with Chapter 2 (commencing with Section  
37 1985) of Title 3 of Part 4 of the Code of Civil Procedure.

38 (3) An order of a court.

39 (c) For purposes of this section, “blood” means “human whole  
40 blood” and “human whole blood derivatives,” as defined for



1 purposes of this chapter and includes “blood components,” as  
2 defined in subdivision (k) of Section 1603.1.

3 SEC. 6. Section 120990 of the Health and Safety Code is  
4 amended to read:

5 120990. (a) Except in the case of a person treating a patient,  
6 no person shall test a person’s blood for evidence of antibodies to  
7 the probable causative agent of AIDS without the written consent  
8 of the subject of the test or the written consent of the subject, as  
9 provided in Section 121020, and the person giving the test shall  
10 have a written statement signed by the subject or conservator or  
11 other person, as provided in Section 121020 confirming that he or  
12 she obtained the consent from the subject. In the case of a physician  
13 and surgeon treating a patient, the consent required under this  
14 subdivision shall be informed consent, by the patient, conservator,  
15 or other person provided for in Section 121020.

16 This requirement does not apply to a test performed at an  
17 alternative site, as established pursuant to Sections 120885 to  
18 120895, inclusive. This requirement does not apply when testing  
19 is performed as part of the medical examination performed  
20 pursuant to Section 7152.5.

21 (b) Nothing in this section shall preclude a medical examiner  
22 or other physician from ordering or performing a blood test to  
23 detect antibodies to the probable causative agent of AIDS on a  
24 cadaver when an autopsy is performed or body parts are donated  
25 pursuant to the Uniform Anatomical Gift Act, provided for  
26 pursuant to Chapter 3.5 (commencing with Section 7150) of Part  
27 1 of Division 7.

28 (c) The requirements of subdivision (a) do not apply when  
29 blood is tested as part of a scientific investigation conducted either  
30 by medical researchers operating under institutional review board  
31 approval or by the department in accordance with a protocol for  
32 unlinked testing. For purposes of this section, unlinked testing  
33 means that blood samples are obtained anonymously or that the  
34 individual’s name and other identifying information is removed in  
35 a manner that precludes the test results from ever being linked to  
36 a particular individual in the study.

37 SEC. 7. Notwithstanding Section 17610 of the Government  
38 Code, if the Commission on State Mandates determines that this  
39 act contains costs mandated by the state, reimbursement to local  
40 agencies and school districts for those costs shall be made pursuant



1 to Part 7 (commencing with Section 17500) of Division 4 of Title  
2 2 of the Government Code. If the statewide cost of the claim for  
3 reimbursement does not exceed one million dollars (\$1,000,000),  
4 reimbursement shall be made from the State Mandates Claims  
5 Fund.

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