

**HIV AND AIDS BILL
(No. XXXII of 2006)**

Explanatory Memorandum

The object of this Bill is to provide for measures for the control and prevention of the propagation of HIV and AIDS whilst at the same time respect the human rights of persons affected or not with the virus.

The Bill also provides for –

- (a) availability of HIV testing facilities;
- (b) the registration of those facilities;
- (c) the testing of donated blood;
- (d) the counselling of persons affected with HIV or AIDS;
- (e) a system of syringe and needle exchange.

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*Minister of Health
and Quality of Life*

24 November 2006

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ARRANGEMENT OF CLAUSES

Clause

1. Short title
2. Interpretation
3. HIV or AIDS not a disability
4. HIV testing facilities
5. HIV testing in public health institutions
6. Prohibited testing
7. HIV testing
8. Testing of donated blood
9. Testing of human tissue donors and human tissues
10. Pre-test counselling

11. Result of HIV test and counselling
12. Surgical and dental procedures or treatment
13. Confidentiality of information
14. Syringe and needle exchange
15. Disposal of syringe and needles
16. Possession of syringes and needles
17. Evidence of certain communications
18. Offences and penalties
19. Jurisdiction
20. Regulations
21. Commencement

A BILL
To provide for measures for the prevention
and containment of HIV and AIDS

Enacted by the Parliament of Mauritius, as follows -

1. Short title

The Act may be cited as the HIV and AIDS Act 2006.

2. Interpretation

In this Act –

“AIDS” means acquired immunodeficiency syndrome;

“dangerous drugs” has the same meaning as in the Dangerous Drugs Act;

“HIV” means Human Immunodeficiency Virus;

“HIV test” means a test which determines whether or not a person is infected with HIV;

“human tissue” includes –

- (a) an organ, or part, of a human body; or
- (b) semen or any substance or secretion, taken from the human body, or part of the human body; but
- (c) does not include blood;

“institution” means a hospital, laboratory, pharmacy or centre for the rehabilitation of drug addicts;

“medical practitioner” means a person holding a certificate of registration under section 28 of the Medical Council Act or section 27 of the Dental Council Act;

“Minister” means the Minister responsible for the subject of health;

“nursing officer” means a registered nursing officer or midwife under the Nursing Council Act;

“paramedical staff” means a person trained to assist medical professionals and to give first aid treatment, or a person who supplements medical practitioners in their activities;

“Permanent Secretary” means the Permanent Secretary of the Ministry to which responsibility for the subject of health is assigned, but where the official head of the Ministry is a Senior Chief Executive Office, reference to the Permanent Secretary shall be reference to the Senior Chief Executive Officer;

“positive” in relation to an HIV test, means a result which shows that the person who is tested was at the time the test was undertaken, infected with HIV;

3. HIV or AIDS not a disability

- (1) Any person who is HIV-positive or has AIDS shall not be considered as having a disability or incapacity by virtue of any enactment and his status or presumed status shall not be used as a ground to discriminate against that person.
- (2) Subsection (1) shall not affect the operation of a pension law if that law provides for a benefit accruing to a person according to the degree of disability which entitles him to such benefit.

4. HIV testing facilities

- (1) No institution or non-governmental organisation shall carry out HIV testing unless it is registered with the Permanent Secretary.
- (2) Any institution or non-governmental organisation which wishes to be registered may apply in the prescribed form to the Permanent Secretary and submit –
 - (a) its certificate of incorporation, where applicable;
 - (b) evidence of its capability to carry out the tests, including evidence of the qualifications possessed by the persons who would be carrying out the tests;
 - (c) evidence to ensure confidentiality and providing counselling; and
 - (d) such other particulars or document as the Permanent Secretary may require.

- (3) Where the Permanent Secretary is satisfied that the institution or non-governmental organisation is a fit institution or organisation to be registered, it shall register it and issue to it a certificate of registration.
- (4) Where an applicant is refused registration, the Permanent Secretary shall give the reasons for his refusal.
- (5) (a) The Permanent Secretary may suspend or cancel a registration made under this section where the institution or non-governmental organisation has contravened this Act or such guidelines as may be made by the Permanent Secretary.
 - (b) Before proceeding to a suspension or cancellation under this subsection, the Permanent Secretary shall call upon the medical institution or non-governmental organisation to show cause why its registration should not be suspended or cancelled.
- (6) The Permanent Secretary shall keep a register in which he shall enter –
 - (a) the name and address of every institution or organisation that is registered;
 - (b) any other particulars as may be prescribed.

5. HIV testing in public health institutions

The Permanent Secretary shall make available facilities in such public hospitals and other public health institutions as he may designate for HIV testing in respect of persons who request an HIV test for themselves.

6. Prohibited testing

- (1) No person shall induce or cause another person to undergo an HIV test –
 - (a) as a condition for employment, continued employment benefits and promotion or continued employment of the other person;
 - (b) as a condition for procurement or offer of goods and services from the other person.
- (2) Nothing under subsection (1) shall prevent the requirement of an HIV test in connection with any application relating to immigration, citizenship, defence or public safety.

7. HIV testing

- (1) No person, other than a medical practitioner, shall make a request for an HIV test on another person.
- (2) Subject to subsection (3) and (5) and section 10, an HIV test on another person shall not be undertaken, except with the informed consent of –
 - (a) the other person;
 - (b) his legal administrator or guardian, where the other person is a minor; or
 - (c) the guardian of the other person, where the latter is a “majeur en tutelle”.
- (3) A medical practitioner may request an HIV test on a person without that person’s consent where –
 - (a) that person is required to undergo such test under this Act;
 - (b) that person has a disability by reason of which he appears to the medical practitioner to be incapable of giving his consent, provided that the medical practitioner is responsible for the treatment of that person and he is of opinion that the health of the person would be at immediate risk without the test.
- (4) A medical practitioner who, in good faith, undertakes an HIV test under subsection (2) shall not, by reason only of undertaking the test, be liable to any civil or criminal liability under any enactment.
- (5) A person may undertake an HIV test on a minor without the consent of his legal administrator or guardian where the minor makes a written request for such test and that person is satisfied that the minor understands the nature of his request.

8. Testing of donated blood

The Permanent Secretary shall issue directions to the blood transfusion service for the purpose of having an HIV test carried out on –

- (a) any donated blood;
- (b) any imported blood product.

9. Testing of human tissue donors and human tissues

- (1) A person who offers to donate his tissue or whose tissue is offered to be donated shall undergo an HIV test immediately before such donation is carried out.
- (2) Subject to subsection (3), no donated human tissue shall be used unless an HIV test has been carried out prior to the proposed use and the result of that test is not positive.
- (3) A person who offers to donate his tissue, and who has undergone an HIV test under subsection (1), shall not be liable to any civil or criminal action in relation to any subsequent use of that tissue.

10. Pre-test counselling

A medical practitioner, a nursing officer or a paramedical staff of an institution, or any member of a non-governmental organisation, registered under section 4 –

- (a) shall counsel a person who is to undergo an HIV test;
- (b) may counsel any person as is considered by him to be in need of counselling.

11. Result of HIV test and counselling

- (1) The medical practitioner, nursing officer or paramedical staff of the institution, or member of a non-governmental organisation, registered under section 4, or any public hospital or public health institution referred to in section 5, shall as soon as practicably possible after the results of an HIV test are obtained, inform and counsel the tested person in person of the results.
- (2) Where the test is positive, the medical practitioner, the nursing officer or paramedical staff of the institution, or member of the non-governmental organisation, or officer of the public hospital or public health institution, as the case may be, –
 - (a) shall inform the Permanent Secretary of the result of the HIV test in such a manner as may be directed by the Permanent Secretary but without disclosing the identity of any tested person;

- (b) shall counsel the tested person, or where appropriate, the legal administrator or guardian of that person, on such matters as the Permanent Secretary may deem appropriate, including –
 - (i) the medical consequences of being found positive;
 - (ii) the modes of transmission and related infections, protection and prevention;
 - (iii) the importance to disclose his status to his spouse, sexual partner or children;
 - (iv) the medical treatment and social benefit available; and
- (c) shall refer the tested person to such centre as may be prescribed for follow up or treatment; and
- (d) may counsel such other person as is considered by him to be in need of counselling on the consequences of the tested person having been found positive.

12. Surgical and dental procedures or treatment

Notwithstanding any other enactment, a medical practitioner or paramedical shall not withhold from carrying out any surgical or dental procedure, or prescribing treatment, where a person refuses to undergo an HIV test.

13. Confidentiality of information

- (1) The Permanent Secretary shall, in consultation with such professional organisations as he may deem necessary, issue guidelines on the confidentiality of information relating to recording, collection, storing and security of information, records or forms used in respect of HIV tests and related medical assessments.
- (2) No person shall collect, record, transmit or store information in respect of HIV tests or related medical assessments of another person except in compliance with the guidelines issued under subsection (1).
- (3) Subject to subsection (4), a person shall not, in any record or form used in relation to –
 - (a) a request for an HIV test by a person in respect of himself;

- (b) an instruction by a medical practitioner to a laboratory for an HIV test to be conducted;
- (c) an HIV test; or
- (d) the notification to the medical practitioner of the result of an HIV test,

include any information which either directly or indirectly identifies the person to whom an HIV test relates, except in accordance with the guidelines issued under subsection (1).

- (4) No person shall disclose any information concerning the result of an HIV test or related medical assessments to any other person except –
 - (a) with the written consent of that person, or his legal administrator or legal guardian, as applicable;
 - (b) to a medical practitioner, nursing officer, paramedical staff who is directly involved in the treatment or counselling of that person, where the HIV or AIDS status is clinically relevant;
 - (c) for the purpose of an epidemiological study or research approved by the Permanent Secretary;
 - (d) upon an order of a court where the information contained in the medical file is directly relevant to the proceedings before the court.
- (5) Nothing in this section shall be construed as preventing the release of statistical or such other information that cannot reasonably be expected to lead to the identification of the person to whom it relates.

14. Syringe and needle exchange

- (1) Subject to this section, an institution or non-governmental organisation may supply, syringes and needles to any person dependent on a dangerous drug.
- (2) No institution or non-governmental organisation shall supply a new syringe or a new needle to any person unless the institution or non-governmental organisation has been prescribed under subsection (3).
- (3) The Permanent Secretary may, after consultation with the Medical Council and Dental Council, and subject to the approval of the

Commissioner of Police, prescribe medical institutions or non-governmental for the purposes of subsection (1).

- (4) Where an institution or non-governmental organisation is satisfied that a person is dependent on a dangerous drug and requires the supply of new syringes or needles as part of a therapy, it may, with the consent of that person, register him according to the procedures established by it.

15. Disposal of syringe and needles

An institution or non-governmental organisation shall, pending their destruction and subject to any regulations made for the purposes of this section, store all used syringes or needles collected pursuant to section 15 in a container resistant to puncture and capable of being sealed or securely closed in such a way that its contents may not cause injury,

16. Possession of syringes and needles

A person who is in possession of a syringe or needle, in compliance with this Act, shall not, by reason only of that possession, be considered as having committed an offence under the Dangerous Drugs Act.

17. Evidence of certain communications

Notwithstanding any other enactment, no communication made by a person in undergoing an HIV test, any medical surgical or dental procedure, or any counselling, under this Act and relating to the sexual behaviour of any person shall be admissible as evidence in any civil or criminal proceedings.

18. Offences and penalties

- (1) Any person who contravenes section 4(1), 6(1), 7(1), 12, 13(2), (3) or (4) or 14(2) shall commit an offence and shall, on conviction, be liable to fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 12 months.
- (2) Any person who contravenes section 15 shall commit an offence and shall, on conviction be liable to a fine not exceeding 100,000 rupees and to imprisonment not exceeding 5 years.
- (3) (a) Any person who treats any other person or his relative –
- (i) unfairly, unjustly, or less favourably than a third person would have been treated in comparable circumstances;
 - (ii) with hatred, ridicule or contempt,

on account of being, or being perceived as being, infected with HIV, shall commit an offence and shall on conviction be liable to a fine not exceeding 50,000 rupees.

- (b) In paragraph (a), “relative” means spouse, child, father, mother, brother, sister, grandparent, grandchild, uncle, aunt, nephew, niece and includes any person with whom the person concerned resides.

- (4) No prosecution for an offence under subsection (2) or (3) shall be instituted except by, or with the consent of, the Director of Public Prosecutions.

19. Jurisdiction

Notwithstanding section 114 of the Courts Act and section 72 of the District and Intermediate Courts (Criminal Jurisdiction) Act a Magistrate shall have jurisdiction to try any offence under this Act or any subsidiary enactment made under this Act, and inflict such penalty as is provided for under this Act or any subsidiary enactment made under this Act.

20. Regulations

- (1) The Minister may make such regulations as he thinks fit for the purposes of this Act.
- (2) Any regulations made under subsection (1) may provide –
 - (a) for a code of conduct for institutions, including reform institutions, medical practitioners, paramedical staff, any other person involved in the protection and care of HIV-positive persons and any person involved in other activities that may give rise to a risk of infection by HIV;
 - (b) that a person who contravenes them shall commit an offence and on conviction shall be liable to a fine not exceeding 25,000 rupees and to imprisonment not exceeding 6 months.

21. Commencement

(1) This Act shall come into operation on a day to be fixed by Proclamation.

(2) Different days may be fixed for the coming into force of different provisions of this Act.