

# Organ Transplants and HIV

This Act directs that it is not a violation of law for a person to perform a solid organ transplant of an organ from an HIV-positive donor to a person who has tested positive for exposure to HIV or any other identified causative agent of AIDS and who is in immediate threat of death unless the transplant is performed. It also provides that a tissue bank that provides an organ from an HIV-positive donor under this provision may not be criminally or civilly liable for the furnishing that organ.

Submitted as:

Illinois

[HB 3857 \(enrolled version\)](#)

Status: Enacted into law in 2004.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act may be cited as "An Act Concerning Solid Organ  
2 Transplants and the Human Immunodeficiency Virus and Acquired Immunodeficiency  
3 Syndrome."  
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5           Section 2. [*Registry of Sperm and Tissue Banks.*]

6           (a) The [Department] shall establish a registry of all sperm banks and tissue banks  
7 operating in this state. All sperm banks and tissue banks operating in this state shall register with  
8 the [Department] by [May 1] of each year. Any person, hospital, clinic, corporation, partnership,  
9 or other legal entity that operates a sperm bank or tissue bank in this state and fails to register  
10 with the [Department] pursuant to this Section commits a business offense and shall be subject to  
11 a fine of [\$5,000].

12           (b) All donors of semen for purposes of artificial insemination, or donors of corneas,  
13 bones, organs, or other human tissue for the purpose of injecting, transfusing, or transplanting  
14 any of them in the human body, shall be tested for evidence of exposure to human  
15 immunodeficiency virus (HIV) and any other identified causative agent of acquired  
16 immunodeficiency syndrome (AIDS) at the time of or after the donation but prior to the semen,  
17 corneas, bones, organs, or other human tissue being made available for that use. However, when  
18 in the opinion of the attending physician the life of a recipient of a bone, organ, or other human  
19 tissue donation would be jeopardized by delays caused by testing for evidence of exposure to  
20 HIV and any other causative agent of AIDS, testing shall not be required.

21           (c) Except as otherwise provided in [insert citation] a person may not intentionally,  
22 knowingly, recklessly, or negligently use the semen, corneas, bones, organs, or other human  
23 tissue of a donor unless the requirements of subsection (b) have been met. Except as otherwise  
24 provided in [insert citation], no person may intentionally, knowingly, recklessly, or negligently  
25 use the semen, corneas, bones, organs, or other human tissue of a donor who has tested positive  
26 for exposure to HIV or any other identified causative agent of AIDS. Violation of this subsection  
27 (c) shall be a [Class 4 felony].

28           (d) It is not a violation of this Section for a person to perform a solid organ transplant of  
29 an organ from an HIV infected donor to a person who has tested positive for exposure to HIV or  
30 any other identified causative agent of AIDS and who is in immediate threat of death unless the

31 transplant is performed. A tissue bank that provides an organ from an HIV infected donor under  
32 this subsection may not be criminally or civilly liable for the furnishing of that organ under this  
33 subsection.

34 (e) For the purposes of this Section, "Human tissue" shall not be construed to mean whole  
35 blood or its component parts. "Tissue bank" means any facility or program that is involved in  
36 procuring, furnishing, donating, processing, or distributing corneas, bones, organs, or other  
37 human tissue for the purpose of injecting, transfusing, or transplanting any of them in the human  
38 body. "Solid organ transplant" means the surgical transplantation of internal organs including,  
39 but not limited to, the liver, kidney, pancreas, lungs, or heart. "Solid organ transplant" does not  
40 mean a bone marrow based transplant or a blood transfusion. "HIV infected donor" means a  
41 deceased donor who was infected with HIV or a living donor known to be infected with HIV and  
42 who is willing to donate a part or all of one or more of his or her organs. A determination of the  
43 donor's HIV infection is made by the donor's medical history or by specific tests that document  
44 HIV infection, such as HIV RNA or DNA, or by antibodies to HIV.

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46 Section 3. [*Severability.*] [Insert severability clause.]

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48 Section 4. [*Repealer.*] [Insert repealer clause.]

49

50 Section 5. [*Effective Date.*] [Insert effective date.]