



# STATE OF MINNESOTA

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ARNE H. CARLSON  
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April 12, 1996

The Honorable Allan Spear  
President of the Senate  
120 Capitol  
St. Paul, MN 55155

Dear President Spear:

I have vetoed and am returning Senate File 2198, Chapter Number 458, a bill that reopens the statute of limitations for claims based on the use of blood plasma derivatives which may have contained the human immunodeficiency virus ("HIV"). This bill raises a myriad of complicated issues grounded in law and public policy. Accordingly, I have taken particular care in considering this legislation. At my request, Commissioner Anne Barry of the Department of Health, and Commissioner Dave Gruenes of the Department of Commerce, thoroughly reviewed medical literature, federal government reports, and case law regarding this matter. They also met with the House and Senate authors of the bill, and reviewed correspondence from representatives of the hemophilia community and the medical products industry. Their careful and thoughtful analysis, combined with their experience as Commissioners of their respective Departments, was invaluable.

There can be no doubt that the contamination of our nation's blood supply with the HIV virus, before the AIDS epidemic was fully understood, is one of the tragic chapters in this nation's history. Those individuals who were infected with the virus through blood transfusions or the use of blood plasma derivatives deserve our sympathy and compassion. However, this bill is not tailored to address their situation in an even-handed manner.

One of the most troublesome aspects of this bill is that it became a lobbying battle between two titans - the plaintiffs' bar association and the medical product manufacturing industry. Somewhere in the process, the legislature lost its focus on taking care of the victims, and as a result, this bill offers only false hope to the victims. It is important to note that thirteen cases have been tried to date across the country, and in not one of them has the victim recovered compensation. Therefore, simply reopening the statute of limitations would not guarantee a victorious result on the merits for these individuals. In fact, if I were to sign this bill, the only winners would be the lawyers for both sides who would spend years litigating these cases.

Another specific concern about this legislation led to my veto. I find it troubling that the legislature deemed it appropriate to only allow individuals to sue who were infected with the HIV virus by their use of commercially manufactured blood plasma derivatives. In doing so, the legislature left those individuals who contracted the virus from blood *transfusions* without any redress. That is fundamentally unfair.

I am also troubled by the legislature's decision to single out one segment of the medical industry as potential defendants - the commercial manufacturers of blood plasma derivative products. Any other party who could have provided negligent advice, including doctors, hospitals, blood banks or lawyers are exempt from liability. Let us not forget that the U.S. Food and Drug Administration approved of these products for sale, and that the Center for Disease Control and the National Institute of Health also had roles in this tragedy. It is manifestly unfair to single out just one party in a tragedy that is much more widespread.

Another concern is that the bill attempts to limit the number of cases that will be heard in Minnesota courts by restricting the availability of litigation to Minnesota victims only. However, as you may recall, when the state of Minnesota tried to prevent residents of other states from receiving welfare benefits, that measure was struck down as a violation of the Commerce Clause - a stretch of constitutional logic, in my opinion. With this legislation, the court would not even have to stretch its logic. These cases will focus on products that were approved by the federal government for sale in interstate commerce. I firmly believe that the court would allow non-Minnesota residents to file suits in Minnesota, making our courts the potential receiving ground for litigation from across the United States. We are mindful of the fact that there are over 500 cases pending in other jurisdictions, and that no state has yet to reopen its statute of limitations.

It is truly disappointing that the legislature was not able to fashion a bill that would have provided real hope to *all* individuals who contracted the HIV virus from the nation's blood supply, while also providing a fair process in which *all* of the potentially responsible parties are a part. Nevertheless, this bill set out to achieve a laudable goal, and it succeeded in raising awareness of the situation in Minnesota. However, there must be a more efficient way to deal with this tragedy than to open the floodgates of litigation.

Fortunately, there is a remedy which is gaining momentum. I strongly support the Ricky Ray legislation which has been introduced at the federal level to create a national compensation system to assist these individuals. The federal legislation must acknowledge the reality that the FDA approval of these products, and the involvement of other national agencies, compels a sharing of

responsibility for this tragedy. Federal legislation is appropriate to address national tragedies, and has been very successful in the past, such as the National Childhood Vaccine Injury Act of 1987. A national compensation system is the only means to ensure that infected individuals will receive fair redress for their injuries in a timely manner, and that the responsibility for the tragedy will be shouldered by all of the appropriate parties.

I have asked Commissioners Barry and Gruenes to follow-up with representatives of the hemophilia and AIDS communities to determine the most effective course of action for Minnesota to take to ensure passage of the federal Ricky Ray legislation.

Warmest regards,



**ARNE H. CARLSON**  
Governor

- c:
- Senator Roger Moe, Majority Leader
  - Senator Dean Johnson, Minority Leader
  - Representative Irv Anderson, Speaker of the House
  - Representative Steve Sviggum, Minority Leader
  - Chief Senate Author(s)
  - Chief House Author(s)
  - Mr. Patrick E. Flahaven, Secretary of the Senate
  - Mr. Edward A. Burdick, Chief Clerk of the House
  - Ms. Joan Anderson Growe, Secretary of State