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Pennsylvania's HIV Stigmatization Act

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Pennsylvania's HIV Stigmatization Act

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Advanced Legal Drafting
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I. Introduction

The last three decades have witnessed breakthroughs in medicine and technology that reduce and control the effect of HIV/AIDS on the human body. A disease that was viewed nearly three decades ago as an inevitable death sentence is now a medically controllable condition that people successfully live with for years. Regardless, the fear surrounding the HIV virus remains alive and well. There is no real way to sugarcoat it – people are very afraid of contracting HIV/AIDS and people are very afraid of those who are HIV-positive. Essentially, this fear is a form of *stigma*, and though it might not seem obvious, stigma is a pivotal driving force behind HIV-proliferation in today’s society. Stigma “continues to attach to an HIV diagnosis and misunderstanding of HIV remains prevalent, resulting in persistent and alarming rates of bias against those living with HIV.”¹

Though breakthroughs in medicine continue to improve the health-related struggles associated with HIV infection, the negative effects of HIV-related stigma plague HIV-positive persons just as they have in past decades. Even judges have noted these negative effects - nearly ten years ago, one New York court acknowledged that HIV-positive individuals can suffer from a number of stressful conditions, listing stigma as one of those conditions. The court stated that “HIV-infected persons necessarily struggle with many stresses in their lives, including the likelihood of early death, management of a multitude of symptoms and medications, the future welfare of their children, rejection of friends and family, stigma, and discrimination.”² Around the same time, a Texas court also acknowledged the negative consequences that stigma can cause

¹ Kenneth MUNSON, Respondent, v. DEL TACO, INC., a California Corporation, Petitioner., 2008 WL 5610702 (Cal.), 5.

² Henrietta D. v. Giuliani, 119 F. Supp. 2d 181, 186 (E.D.N.Y. 2000) aff’d sub nom. Henrietta D. v. Bloomberg, 331 F.3d 261 (2d Cir. 2003).

an HIV-positive person, stating that, “[a]side from the medical and health concerns, [the HIV-positive plaintiff] must deal with the social stigma of being HIV-positive, even though he was a hapless victim. [The HIV-positive plaintiff] will likely be treated as a [sic] outcast by many, because some people still primarily associate HIV with homosexuality, which is not embraced or endorsed by society as a whole.”³

In general, stigma is a powerful social mechanism used to stereotype certain groups of individuals. The stigma suffered by HIV-positive individuals is known as HIV/AIDS-related stigma. It is defined as “the social devaluing of people perceived to have AIDS or HIV as well as the individuals, groups, and communities with which they are associated.”⁴ Academics have noted the negative impact of HIV/AIDS-related stigma on efforts to end HIV-proliferation and have studied how stigmatization negatively affects both individual and public health. Such studies often focus on how HIV/AIDS-related stigma plays a uniquely prominent role in the spread of HIV: stigma often deters HIV-positive persons from getting tested for their illness; from receiving necessary medical assistance; and from interacting with other members of society.

As a result of HIV/AIDS-related stigma, infected individuals are often unaware about their HIV-positive status, the steps must take to maintain their health, and the protocol they need to follow in order to monitor and control their symptoms. The effects of HIV/AIDS-related stigma do not end with the victimized individual; stigma hurts the overall public health by giving the disease an extremely negative connotation

³ *Kinzie v. Dallas County Hosp. Dist.*, 239 F. Supp. 2d 618, 639 (N.D. Tex. 2003) *aff’d*, 106 Fed. Appx. 192 (5th Cir. 2003)(unpublished).

⁴ Gregory M. Herek, Keith F. Widaman, and John P. Capitanio, *When Sex Equals AIDS: Symbolic Stigma and Heterosexual Adults' Inaccurate Beliefs About Sexual Transmission of AIDS*, *Social Problems* 52(1) (2005): 2, http://psychology.ucdavis.edu/Rainbow/html/Social_Problems_05_pre.PDF (accessed March 1, 2013).

that encourages the ignorance fueling its transmission and permits the unwarranted fear surrounding the virus to flourish.

Stigma has been a popular subject of psychological research for the past few decades. A broader definition of the term has five parts: “1) identification and labeling of human differences; 2) dominant cultural beliefs that link the labeled person to undesirable characteristics, creating negative stereotypes; 3) categorization of labeled persons to separate “us” vs. “them,” 4) labeled persons experiencing status loss and discrimination, leading to unequal outcomes; and 5) access to social, economic, and political power by a dominant group, allowing for full execution of disapproval, rejection, exclusion, and discrimination against the labeled group.”⁵ Stigma attaches to an individual because of a trait the person possesses that makes him or her “different.”⁶ The stigmatized individual, by virtue of his or her differentiating trait, is understood to be negatively valued in society.⁷

HIV/AIDS-related stigma attaches to an infected individual because he or she has a communicable, potentially fatal condition that is commonly associated with shameful acts, taboo sexual behavior, illegal and/or unhealthy habits, and general feelings of disgust. This type of stigma causes identifiable social actors (for purposes of my statute, owners and operators of places of public accommodation) to view HIV-positive persons

⁵ Jennifer N. Sayles, Gery W. Ryan, Junell S. Silver, Catherine A. Sarkisian, and William E. Cunningham, Experiences of Social Stigma and Implications for Healthcare Among a Diverse Population of HIV Positive Adults, *Journal of Urban Health: Bulletin of the New York Academy of Medicine* 84.6 (2007): 815. 2007, <http://search.proquest.com/authenticate.library.duq.edu/socscijournals/docview/228403505/1372E2505E926E401D9/1?accountid=10610> (accessed March 1, 2013).

⁶ Peter Aggleton and Richard Parker, HIV and AIDS-related Stigma and Discrimination: A Conceptual Framework and Implications for Action, *Social Science and Medicine Journal* 57.1 (2004): 14., http://ac.els-cdn.com/S0277953602003040/1-s2.0-S0277953602003040-main.pdf?_tid=b12b62f6710c0d0e7ba6302b8b9f3da8&acdnat=1339171786_677b7992965737aa9554964684a5befo (accessed March 1, 2013).

⁷ Id.

in a negative, degrading manner and to treat HIV-positive persons differently than they would treat uninfected individuals.

HIV/AIDS-related stigma has multiple sources, but often stems from personal concerns rooted in the desire to protect one's own health and well-being. Stigma causes HIV-positive individuals to be viewed as though they're "contaminated" and possess a "spoiled identity."⁸ HIV/AIDS-related stigma inevitably leads to stereotyping: people assume that HIV-positive persons engage in behavior that is undesirable, such as promiscuous sexual activity and/or intravenous drug use. These stereotypes become the rationale for the theory that individuals with HIV are fundamentally different from the rest of the population. Persons who project HIV/AIDS-related stigma manifest their views as anger and other negative feelings toward HIV-positive individuals, including "beliefs that they deserve their illness, avoidance and ostracism, and support for coercive public policies that threaten their rights."⁹ HIV-positive individuals battling stigma are subjected to an overwhelming amount of social inequality and prejudice, which is precisely why their ability to resist the forces that discriminate against them is limited.¹⁰ It is my position that, via anti-stigmatization law, our Commonwealth ought to be a pro-active force in the fight to eradicate HIV/AIDS-related stigma and the negative consequences it has on the public health and the individuals living with the disease.

⁸Id. at <http://search.proquest.com.authenticate.library.duq.edu/socscijournals/docview/228403505/1372E2505E926E401D9/1?accountid=10610>.

⁹ Gregory M. Herek, John P. Capitanio, and Keith F. Widaman, HIV-Related Stigma and Knowledge in the United States: Prevalence and Trends, 1991-1999, *American Journal of Public Health* 92.3 (2002): 1, <http://psychology.ucdavis.edu/rainbow/html/ajph2002.pdf> (accessed March 1, 2013).

¹⁰ Id. at http://ac.els-cdn.com/S0277953602003040/1-s2.0-S0277953602003040-main.pdf?_tid=b12b62f6710codoe7ba6302b8b9f3da8&acdnat=1339171786_677b7992965737aa9554964684a5bef0.

For the individual battling the disease, consequences of HIV/AIDS-related stigma include poor social support and extreme fear of status disclosure.¹¹ As a result of these consequences, people deter from getting tested for HIV; from revealing their status to sexual partners, family members, and friends; and from seeking the medical and social assistance necessary to maintain their health.¹² HIV-positive persons battling stigma and discrimination describe their search for “safe environments,” which are settings filled with supportive resources offering help and providing services without judgment. These are places filled with individuals who are accepting of those living with HIV/AIDS.¹³

In contrast, HIV-positive persons seek to avoid “unsafe environments.” “Unsafe environments” involve exposure to individuals who are judgmental, misinformed, and unsupportive.¹⁴ Often, HIV positive persons functioning in “unsafe” environments choose to keep their status a secret, burdened by the potential rejection that might accompany disclosure.¹⁵ By choosing to cope with their condition alone, these individuals cut off the social support necessary to combat the stress, loneliness, and depression that stems from the HIV/AIDS-related stigma they experience. Additionally, in contexts where HIV/AIDS is highly stigmatized, fear of stigma and discrimination may cause individuals to isolate themselves to the extent that they are unable or unwilling to access essential medical and psychological assistance. This tragic result is

¹¹Id. at <http://search.proquest.com.authenticate.library.duq.edu/socscijournals/docview/228403505/1372E2505E926E401D9/1?accountid=10610>.

¹² Id. at <http://psychology.ucdavis.edu/rainbow/html/ajph2002.pdf>.

¹³Id. at <http://search.proquest.com.authenticate.library.duq.edu/socscijournals/docview/228403505/1372E2505E926E401D9/1?accountid=10610>.

¹⁴ Id.

¹⁵ Id.

known as “internalized stigma.”¹⁶ Internalized stigma can negatively affect an individual for years. Its symptoms “are correlated consistently with treatment non-adherence, suicidal ideation, disease progression, and mortality.”¹⁷

Though HIV/AIDS-related stigma often stems from the shame associated with certain taboo behaviors that can lead to HIV transmission, people who become infected with HIV through no fault of their own are still victims of stigmatization. Children who contract HIV from their HIV-positive mother during birth are uniquely sensitive to HIV/AIDS-related stigma and discrimination and may struggle to engage in their community despite support from close family and friends. Literature suggests that children with HIV may be at risk of enduring serious psychosocial problems as a result of exposure to HIV/AIDS-related stigma, including disruptive behaviors, anxiety, and depression.¹⁸ Factors increasing a child’s propensity for psychosocial deficiencies include poor relationships with parents, poor relationships with peers, and a lack of social support from adults outside of their family.¹⁹ Such factors are influenced by a number of variables, including the coping strategies employed by the child and his or

¹⁶ Richard Parker, Peter Aggleton, Kathy Attawell, Julie Pulerwitz, and Lisanne Brown, HIV/AIDS-related Stigma and Discrimination: A Conceptual Framework and an Agenda for Action, (2002): 8. www.usaid.gov. The Population Council, http://pdf.usaid.gov/pdf_docs/Pnacq832.pdf (accessed March 1, 2013).

¹⁷ Lambda Legal, HIV Stigma and Discrimination in the U.S.: An Evidence-Based Report, http://data.lambdalegal.org/publications/downloads/fs_hiv-stigma-and-discrimination-in-the-us.pdf (accessed March 1, 2013).

¹⁸ Ric G. Steele, Timothy D. Nelson, and Brian P. Cole, Psychosocial Functioning of Children with AIDS and HIV Infection: Review of the Literature from a Socioecological Framework, *Journal of Development and Behavioral Pediatrics* 28(1) (2007): 63, http://ovidsp.tx.ovid.com.authenticate.library.duq.edu/sp-3.5.1a/ovidweb.cgi?WebLinkFrameset=1&S=CKLGFPCHIODDADCJNCALFEOBKMGHAAoo&returnUrl=ovidweb.cgi%3f%26Full%2bText%3dL%257cS.sh.15.16%257c0%257c00004703-200702000-00018%26S%3dCKLGFPCHIODDADCJNCALFEOBKMGHAAoo&directlink=http%3a%2f%2fgraphics.tx.ovid.com%2fovftpdfs%2ffPDDNCOBFEDJIOoo%2ffso46%2fovft%2flive%2fgvo25%2fo0004703%2fo004703-200702000-00018.pdf&filename=Psychosocial+Functioning+of+Children+with+AIDS+and+HIV+Infection%3a+Review+of+the+Literature+from+a+Socioecological+Framework.&pdf_key=FPDDNCOBFEDJIOoo&pdf_index=/fso46/ovft/live/gvo25/00004703/00004703-200702000-00018 (accessed March 1, 2013).

¹⁹ *Id.* at 65.

her caregiver, the number and severity of negative life events that the child experiences, and the amount of social support received by the child's family.²⁰ HIV/AIDS-related stigma's potential to traumatize an infected child is daunting.

The daunting effects of HIV/AIDS-related stigma reach a greater audience than just the HIV-positive victim. Products of stigma such as a person's "failure to get tested for HIV, delays in seeking medical care, failure to obtain such care, non-adherence to antiretroviral treatment, and resulting disease progression" are all results of HIV/AIDS-related stigma that have seriously negative public health consequences.²¹ Stigma encourages people to remain uneducated about HIV transmission and untreated for their mental and physical ailments. A cycle of ignorance results: those who possess inaccurate information about HIV transmission are more likely to spread HIV/AIDS-related stigma that discourages healthy behavior, and the spread of HIV/AIDS-related stigma influences the choice to remain ignorant. Consequently, people are susceptible to contracting the virus, and those who are inflicted spend their time ill and ostracized, as opposed to being functioning, contributing members of society who are able to provide for themselves.

Though much of the research concerning HIV/AIDS-related stigma focuses on the beliefs and attitudes of the individuals who project stigma, recent literature on the subject describes stigma as a powerful social tool, as "a mechanism for producing and reproducing relations of power and control."²² Stigma causes certain groups of people to be devalued while allowing others to feel superior. The construction of stigma

²⁰ *Id.*

²¹ *Id.* at http://data.lambdalegal.org/publications/downloads/fs_hiv-stigma-and-discrimination-in-the-us.pdf.

²² *Id.* at http://ac.els-cdn.com/S0277953602003040/1-s2.0-S0277953602003040-main.pdf?_tid=b12b62f6710codoe7ba6302b8b9f3da8&acdnt=1339171786_677b7992965737aa9554964684a5bef0.

involves the marking of differences between categories of people, and through such marking, their insertion in systems or structures of power.²³ This sheds light on how HIV/AIDS-related stigma can devalue the infected person's civil and social rights.

Education is a tool often used to fight the flawed ideologies that give rise to HIV/AIDS-related stigma. Educational efforts about HIV and its transmission have become more abundant over the past two decades. Despite this, results from a 2009 national survey conducted by the Kaiser Family Foundation indicate that "levels of knowledge concerning HIV transmission have not improved since 1987."²⁴ In that survey, 27% of respondents believed that HIV could be transmitted by sharing a drinking glass, 17% believed HIV could be contracted by touching a toilet seat, and 14% believed HIV was transmittable by swimming in a pool.²⁵ More than 34% of those polled held at least one of the aforementioned misconceptions.²⁶ Therefore, in order to combat HIV/AIDS-related stigma (and, ultimately, the spread of the virus) in Pennsylvania, it is essential to provide people with more than just efficient access to accurate information about the virus, how it is transmitted, and its manifestation within the human body – the state needs a law to enforce its mandate against deterring people from projecting stigma.

Stigma is employed by owners, operators, and representatives of public entities that seek to legitimize their own dominant status within existing structures of social inequality.²⁷ As previously mentioned, the individuals battling stigma have limited resources to fight the discrimination working against them: "[p]eople living with HIV

²³ Id.

²⁴ Id. at 1.

²⁵ Id.

²⁶ Id.

²⁷ Id.

face unlawful discrimination in every public arena, from employment and housing to the public accommodations they seek to access in the regular course of daily life. The ability of people with HIV to access public accommodations without discrimination is profoundly important and strong antidiscrimination protections are crucial to them.”²⁸ To significantly lower the chance of HIV infection in Pennsylvania, the Commonwealth must implement a law that discourages owners and operators of places of public accommodation from projecting the HIV/AIDS-related stigma that fuels the virus’ proliferation.

II. My Proposal: An Anti-Stigma Statute for the Commonwealth of Pennsylvania

My goal was to create a statute that prevents HIV/AIDS-related stigmatization in places of public accommodation. In order to draft my statute, I consulted anti-discrimination law at both the state and federal level. I started with Title III of the Americans with Disabilities Act of 1990 (“ADA”), a federal law prohibiting discrimination of disabled individuals in places of public accommodation. The ADA considers HIV infection to be a disability, and many HIV-positive persons have successfully brought discrimination claims under this law.

The ADA’s specific purpose is “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities,” because “unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such

²⁸ Kenneth MUNSON, Respondent, v. DEL TACO, INC., a California Corporation, Petitioner., 2008 WL 5610702 (Cal.), 7-8.

discrimination.”²⁹ By enacting the ADA, Congress attempted to clarify what it means to be a “disabled person.”³⁰ Congress also attempted to shield individuals fitting that definition from discriminatory practices by awarding them monetary compensation when discriminated against by an owner or operator of a place of public accommodation.³¹ The ADA also takes note of the harm caused to the overall public when such an entity discriminates against a disabled person; it provides that, if appropriate “to vindicate the public interest,” the Attorney General may assess a civil penalty against a discriminating public entity in the amount of \$50,000 for its first violation, and no more than \$100,000 for subsequent violations.³²

In the case of Bragdon v. Abbott, the Supreme Court of the United States determined that HIV infection constituted a “disability” for purposes of recovery under the Americans with Disabilities Act.³³ In Bragdon, the plaintiff went to the defendant-dentist’s office for an examination. The plaintiff disclosed that she was HIV-positive on the defendant’s patient registration form.³⁴ The defendant performed a dental examination on plaintiff, discovered that she had a cavity, and subsequently informed her of “his policy against filling cavities of HIV-infected patients.”³⁵ The defendant told the plaintiff that he was not willing to work on her teeth in his office - he said he would be willing to perform dental work on her teeth at a hospital, but that she would be responsible for financing the facility’s services.³⁶ The plaintiff brought suit against him, alleging disability discrimination under the ADA. In remanding the case for further

²⁹ Title III of the Americans with Disabilities Act, 42 U.S.C.A. § 12101

³⁰ Id.

³¹ See § 12188

³² Id.

³³ Bradgon v. Abbott, 524 U.S. 624, 631 (1998).

³⁴ Id. at 638.

³⁵ Id. at 639.

³⁶ Id.

proceedings, the Supreme Court confirmed the plaintiff's assertion that her HIV infection constituted a "disability" under the ADA's definition of the term.³⁷ When drafting my statute, I specifically noted that HIV constitutes a "disability" for purposes of recovering against an entity for its stigmatization.

When drafting my statute, I also looked to the Pennsylvania Human Relations Act ("PHRA") for guidance.³⁸ The PHRA is enforced by the Pennsylvania Human Relations Commission ("PHRC"), which is the agency charged with enforcing Pennsylvania's anti-discrimination laws. The PHRA prohibits an employer from discriminating against any person on account of their "race, color, religious creed, ancestry, age, sex, national origin or non-job related handicap or disability or the use of a guide or support animal because of the blindness, deafness or physical handicap."³⁹

The PHRA also specifically mandates that an employer may not:

Refuse, withhold from, or deny to any person because of his race, color, sex, religious creed, ancestry, national origin or handicap or disability, or to any person due to use of a guide or support animal because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals, either directly or indirectly, any of the accommodations, advantages, facilities or privileges of such public accommodation, resort or amusement.⁴⁰

Consequently, both the ADA and PHRA prohibit the discrimination of disabled individuals in places of public accommodation. The ADA provides that a plaintiff may receive compensatory damages in certain instances of discrimination (such as when the Department of Justice aids the plaintiff in bringing his or her claim). The PHRA also permits a plaintiff to recover damages for the mental suffering he or she experiences as a

³⁷ *Id.* at 631.

³⁸ See Pa. Stat. Ann. tit. 43, § 955 (West)

³⁹ Pa. Stat. Ann. tit. 43, § 955 (West)

⁴⁰ *Id.*

result of being discriminated against.⁴¹ However, both statutes lack clear schemes for awarding damages. My law aims to provide a stigmatized plaintiff recovery via three types of relief – compensatory, liquidated, and injunctive. A portion of its language is modeled after the ADA.

As a general rule, Title III of the ADA states that:

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.⁴²

The language used by the ADA in this section makes it clear that denying a disabled person full and equal enjoyment of a public organization’s benefit amounts to illegal discrimination. The Act focuses on ensuring that disabled individuals have the same rights and opportunities as those who are not disabled. The discrimination sought to be prevented is the actual deprivation of a disabled person’s rights and/or privileges.

Since Bragdon, the ADA has provided relief for HIV-positive individuals who experience discrimination in places of public accommodation. The Act also provides information about the general concepts giving rise to anti-discrimination law. But while the ADA attempts to prevent discrimination, my statute’s primary goal is to prevent HIV/AIDS-related stigmatization. The concepts of discrimination and stigma are similar and often related; even scholars tend to group the two terms together and use them interchangeably. My position is that, though connected, the concepts of discrimination and stigmatization are separate and unique.

⁴¹ See Canal Side Care Manor, LLC v. Pennsylvania Human Rel. Commn., 30 A.3d 568, 574 (Pa. Cmmw. 2011) (stating that “[i]n matters filed under section 5 of the PHRA, the Commission is authorized to award damages for embarrassment and humiliation”).

⁴²See 42 U.S.C.A. § 12182 (West)

Unlike the ADA and PHRA, the law I created focuses on preventing stigmatization. Stigma refers to the way people think and view other people; the term does not refer to actual discriminatory acts. Though stigma often leads to and can be manifested through discriminatory statements, action, or inaction, an owner or operator of a public entity must first stigmatize against an individual before it discriminates. The goal of my drafting process was to draft a law that would link an entity's stigma to the discrimination resulting from that stigma, to the emotional harm that a stigmatized individual suffers as a result of the entity's discrimination. My ultimate goals are to compensate the stigmatized, HIV-positive person for the long-term emotional harm they suffer as a result of a public entity's stigma, and to deter public entities from projecting stigma in general.

I hope to do this via my anti-stigmatization statute, which is for the Commonwealth of Pennsylvania. Article I, section 1 of Pennsylvania's Constitution states that "[a]ll men are born equally free and independent, and have certain inherent and inalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness."⁴³ The language of our Constitution makes it clear that our government promotes equality, freedom, and the preservation of civil liberties. A statute geared towards preventing the stigmatization of HIV-positive individuals is most certainly in accordance with the principles of justice that our Commonwealth seeks to advance and protect.

My statute aims to advance these principles of justice by focusing on the entire process of stigmatization, from the inception of prejudice to the actual harm a

⁴³ See Pa. Const. art. I, § 1.

stigmatized individual experiences. The process starts when an owner or operator of a place of public accommodation stigmatizes HIV-positive individuals. This stigma causes the entity to issue discriminatory statements and/or engage in action or inaction that is discriminatory in nature. As a result, the stigmatized HIV-positive individual is not only deprived of some right, but he or she also suffers emotional pain as a result of being stigmatized. Like the ADA and PHRA, my statute has a component prohibiting the discrimination of HIV-positive persons in places of public accommodation. But in order to link together an entity's stigma, its discriminatory acts, and an HIV-positive individual's resulting long-term emotional harm, my statute lists specific requirements that must be satisfied in order for a stigmatized person to make a claim for damages.

First, an HIV-positive person must show that an owner or operator of a place of public accommodation stigmatized the HIV-positive person through the entity's discriminatory statements, action, or inaction. Second, a reasonable person must be capable of finding that the entity's stigmatization was discriminatory in nature. Third, in order to ward off frivolous claims, the HIV-positive person must show that the stigmatizing statement, act, or inaction was coupled with the entity's decision to take some sort of discriminatory action, such as denying the HIV-positive person a good, service, facility, privilege, advantage, or accommodation provided by the entity. Fourth and finally, the HIV-positive individual must show that the entity's stigmatization, and its resulting act of discrimination, could have reasonably caused the HIV-positive person to experience emotional harm and/or suffering. This type of harm can be shown through the stigmatized individual's testimony or through his or her medical records. All four elements must be satisfied in order for an HIV-positive person to bring a claim for damages pursuant to my statute.

My statute’s framework for establishing a claim of stigmatization was inspired by a federal cause of action known as a “stigma-plus” claim.⁴⁴ Stigma plus claims are “based on a termination from government employment” and relate to the stigma one experiences when his or her reputation is damaged.⁴⁵ In the case of Segal v. City of New York, the United States Court of Appeals for the Second Circuit cited the District Court’s explanation behind the existence of “stigma-plus” claims, which is that the “[l]oss of reputation can constitute deprivation of a liberty interest when, for example, it occurs in the course of dismissal from government employment.”⁴⁶

In Segal, the United States Court of Appeals for the Second Circuit stated that a plaintiff must satisfy three elements in order to bring a stigma-plus claim:

First, a plaintiff must ... show that the government made stigmatizing statements about [her]- statements that call into question [the] plaintiff’s good name, reputation, honor, or integrity . . . [s]econd, a plaintiff must prove these stigmatizing statements were made public . . . [t]hird, a plaintiff must show that the stigmatizing statements were made concurrently with, or in close temporal relationship to, the plaintiff’s dismissal from government employment.⁴⁷

I was influenced by the third element of a stigma-plus cause of action: the coupling of a stigmatizing statement with actual discriminatory action: dismissal from employment. Stigma can be a very difficult concept to measure, quantify, and translate onto paper. Consequently, for purposes of providing relief, my statute requires a plaintiff to show that he or she has been the victim of a concrete discriminatory act along with showing that he or she experienced/experiences subsequent emotional harm as a result of being stigmatized. The harm suffered is actually the result of the stigma, which caused the entity to discriminate in the first place. Thus, damages pursuant to my statute take into

⁴⁴ See Segal v. City of New York, 459 F.3d 207, 212 (2d Cir. 2006).

⁴⁵ Id.

⁴⁶ Segal, 459 F.3d at 211.

⁴⁷ Id. at 212-13 (internal citations omitted).

account the entire process of stigmatization, from its inception in prejudicial mental thinking, to resulting concrete instances of discrimination, to the emotional harm that resonates with a person as a result of being stigmatized.

III: My Proposal: Damages as a Result of an Entity’s Stigmatization of an HIV-positive Individual

The harm that my statute aims to prevent is the negative social effect that stigma has on both individual and public health. Though we are living in a post-Bragdon era, “[p]eople with HIV continue to experience discrimination in accessing health care services”⁴⁸, as well as other types of public services. Most unfortunately, people can live with the psychological pain that stigma causes for years.

“A set of effective antidiscrimination laws - with remedies that effectively serve the deterrence goals of such laws - is a critical part of the solution to this societal problem.”⁴⁹ My statute aims to deter stigmatization by providing HIV-positive persons with an enforceable statutory scheme for awarding damages to stigmatized individuals. The mental suffering and harm that an HIV-positive individual experiences as a result of being stigmatized is difficult to measure and quantify, and its intensity will surely vary on a case-by-case basis. Similarly, it is hard to attribute a dollar amount to the negative effect that one instance of stigma can have upon the overall public health. Indeed, when evaluating the gravity of this type of harm, “[t]he amount of pain and suffering damages, both past and future, is primarily a jury question.”⁵⁰ My statute attempts to be mindful of this problem of uncertainty by offering the stigmatized, HIV-positive individual three

⁴⁸ Kenneth MUNSON, Respondent, v. DEL TACO, INC., a California Corporation, Petitioner., 2008 WL 5610702 (Cal.), 8.

⁴⁹ Id. at 10-11.

⁵⁰ Krysmalski by Krysmalski v. Tarasovich, 622 A.2d 298, 312 (Pa. Super. 1993).

potential avenues for relief: compensatory damages, liquidated damages, and injunctive relief.

My statute provides that an HIV-positive person who can establish each element of a stigmatization cause of action may make a claim for compensatory damages when his or her harm is related to future pecuniary loss. Compensatory damages, in this regard, are most appropriate when the stigmatized individual's harm is quantifiable or measurable in a tangible manner. My statute also provides that a plaintiff may make a claim for injunctive relief when the stigmatization he or she experiences stems from an entity's discriminatory action or inaction. In this regard, the injunctive relief is meant to remedy an entity's concrete act of discrimination, and to simultaneously discourage the entity from committing that act or a similar act again. Finally, the stigmatized HIV-positive individual may bring a claim for liquidated damages when his or her harm is related to mental and emotional pain, suffering, or anguish. This is precisely because such types of trauma are very difficult to measure and quantify.

Liquidated damages "is a term of art originally derived from contract law."⁵¹ A contractual provision for liquidated damages "is a provision that specifies or provides a method of determining a sum which a contracting party agrees to pay, or a deposit which a contracting party agrees to forfeit, for the breach of some contractual obligation."⁵² The term "liquidated damages" refers specifically to "the sum a party to a contract agrees to pay if he breaks some promise, and which, having been arrived at by a good faith effort to estimate in advance the actual damage that will probably ensue from

⁵¹ *Pantuso Motors, Inc. v. Corestates Bank, N.A.*, 798 A.2d 1277, 1282 (Pa. 2002).

⁵² 17 Causes of Action 253 (Originally published in 1988).

the breach, is legally recoverable ... if the breach occurs.”⁵³ Liquidated damages “may be awarded ‘only in cases where the amount is reasonable and there is a difficulty in assessing the harm that would be caused by a breach.’”⁵⁴ If a contractual provision for liquidated damages is reasonable, it will be enforceable. If it is enforceable, “the amount recoverable will be the sum specified in the contract, or a sum determined by the application of a formula specified in the contract.”⁵⁵

Under Pennsylvania law, liquidated damages are often awarded in cases involving employment, property, and commercial law. For example, a Pennsylvania statute related to employment discrimination states that “[a]n employer who willfully and knowingly violates the provisions of section 3 of this act shall be liable to the employee or employees affected in the amount of their unpaid wages and in addition, an equal amount as liquidated damages.”⁵⁶ Likewise, property law within this jurisdiction mandates that “[a]n agreement of sale may contain a liquidated damages or forfeiture clause that permits the seller, upon the purchaser's default, to retain the deposit money as liquidated damages and terminate the transaction in lieu of pursuing other remedies.”⁵⁷ Pennsylvania commercial law also notes that “[d]amages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.”⁵⁸ Ultimately, if the parties to a contract agree as to

⁵³ Pantuso Motors Inc., 798 A.2d at 1282 (quoting In re Plywood Co. of Pa., 425 F.2d 151, 154 (3d Cir. 1970)).

⁵⁴ Id. at 1282.

⁵⁵ 17 Causes of Action 253 (Originally published in 1988)

⁵⁶ Pa. Stat. Ann. tit. 43, § 336.5 (West)

⁵⁷ 6 Summ. Pa. Jur. 2d Property § 8:125 (2d ed.)

⁵⁸ 13 Pa. Consol. Stat. Ann. § 2718 (West)

“what the damages for a breach of their contract shall be, the damages are said to be liquidated; and, unless the agreement violates some principle of law, the parties are bound thereby.”⁵⁹

In Pennsylvania, courts “hold valid agreed-upon provisions for damages when they are construed as liquidated damages and hold invalid agreed-upon provisions for damages when they are construed as penalties.”⁶⁰ Whether or not a liquidated damages clause allots for compensation or penalties involves a closer examination of the parties’ contract: “the cardinal tests are the intention of the parties and the reasonableness or unreasonableness of the amount fixed, according to the certainty and ease or the difficulty in ascertainment of the actual damages, and according to the similarity of disproportion between the amount provided and the actual probable loss.”⁶¹

My statute is clearly not within the realm of commercial or property law – it stems from concepts rooted in constitutional law, tort law, and civil rights. However, because of the difficult nature of assessing an individual’s personal mental harm and the overall harm to the public health caused by an entity’s stigmatization, liquidated damages are proper when attempting to assess the damages that ought to be owed to a stigmatized HIV-positive person. In order to be capable of enforcement, the liquidated damages provision of my statute must be reasonable. The provision set out by my statute is based on the assumption that every place of public accommodation enters into a licensing/registration agreement with the appropriate state agency upon the public entity’s establishment. This licensing/registration agreement will have a clause

⁵⁹ 11 West's Pa. Prac., Trial Handbook § 33:20 (3d ed.)

⁶⁰ Id.

⁶¹ Id.

requiring the entity to refrain from engaging in stigmatizing behavior. It sets a specific amount of liquidated damages that the entity will owe if this provision is violated.

For purposes of administering liquidated damages pursuant to my statute, the licensing/registration agreement between the Commonwealth and the entity will act as the contract. Before becoming established, an entity serving as a place of public accommodation needs to acquire a license from a Pennsylvania state agency to operate within the Commonwealth. For example, for an owner or operator of a place of public accommodation to administer health services to Pennsylvania citizens, it would first need to obtain a license from the Commonwealth's Department of Health. My statute would require a public entity, as part of its licensing contract with Pennsylvania, to agree to refrain from engaging in any form of HIV-related stigmatization when administering public services. If the owner or operator of a place of public accommodation breaches that contractual agreement and a plaintiff can prove all four elements of a stigmatization cause of action pursuant to my statute, the entity may be held liable for a liquidated amount of damages. When deciphering the amount of liquidated damages that ought to be available to a stigmatized individual, I drew from social science research, jury/settlement awards in comparable legal matters, and discrimination statutes already in effect.

It was clear from the social-science research that HIV/AIDS-related stigma causes infected persons various levels of mental stress, suffering, and anguish. In this regard, damages resulting from stigma are most akin to those suffered by plaintiffs who bring claims for emotional distress and negligence. Juries have awarded damages in

amounts all across the board for such injuries.⁶² For example, one jury awarded \$5,000,000 and \$7,000,000, respectively, to two children who lost their limbs as a result of a driver's negligent operation of a car.⁶³ Though the anguish suffered by a stigmatized individual is not physical in nature, it can cause psychological damage that plagues a person for years.

Damages for psychological harm caused by stigmatization ought to be comparable to damages awarded for psychological harm stemming from a public entity's discriminatory acts. In Canal Side Care Manor, LLC v. Pennsylvania Human Rel. Commn., a woman in her mid-thirties was discriminated against by the staff of personal care home that illegally evicted her from its facility because she was HIV-positive.⁶⁴ The Pennsylvania Human Relations Commission awarded her \$50,000 plus interest for embarrassment and humiliation, in addition to charging the home with a \$5,000 civil penalty. The personal care home appealed, and the Commonwealth Court affirmed the PHRC's \$50,000 award to the plaintiff.⁶⁵ In doing so, the Commonwealth Court found that there was direct evidence that the home's staff discriminated against the plaintiff on the basis that she was HIV-positive.⁶⁶

In my personal experience working at a law firm that provides assistance to HIV-positive persons, I found that many HIV/AIDS-discrimination cases settle for large amounts, precisely because of the long-term mental harm that can result from being discriminated against on the basis of HIV infection. Like aforementioned jury awards, the settlement awards in such cases have also been all across the board. In one case, an

⁶² See Krysmalski by Krysmalski, Tarasovich, 622 A.2d at 301.

⁶³ Id.

⁶⁴ Canal Side Care Manor, LLC v. Pennsylvania Human Rel. Commn., 30 A.3d 568, 570 (Pa. Cmmw. 2011)

⁶⁵ Id.

⁶⁶ Id. at 576.

HIV-positive child wrongfully denied admission to a private school because of his status received a \$700,000.⁶⁷ In another, an HIV-positive man was reportedly given a \$10,000 settlement award after a Philadelphia ambulance crew refused to help him upon learning of his status. In addition to giving the man the \$10,000 award, the City provided him with a written apology and was required to train more than 2,000 firefighters and emergency medical workers to prevent future instances of discrimination against HIV-positive persons in the context of medical emergencies.⁶⁸ Requiring the City to train its firefighters is an example of the type of injunctive relief that is available under my statute and that may be appropriate based on the circumstances of an individual case. It is worth noting that though it was reported that the HIV-positive individual's settlement award was \$10,000, a copy of the actual settlement agreement denotes that he received \$50,000.⁶⁹

As previously mentioned, the ADA does not contain a liquidated damages clause or prescribe a set amount of damages for violations of its provisions. It does, however, provide for two set amounts in civil penalties when a public entity discriminates against someone based on his or her disability: \$50,000 for a public entity's first violation, and no more than \$100,000 for subsequent offenses. Though liquidated damages are not meant to be imposed as penalties (and will clearly be unenforceable if deemed by a court as doing so), I considered these numbers as a guideline for the liquidated damages provision in my statute, and I pose that these amounts are reasonable based on the

⁶⁷ See AIDS Law Project, Milton Hershey Settlement Agreement, <http://www.aidslawpa.org/wp-content/uploads/2012/09/Milton-Hershey-School-Signed-Settlement-Agreement-9-12-2012.pdf>. (accessed March 20, 2013).

⁶⁸ See Philly.com, Aids Discrimination Case Settled City Ambulance Crew Refused to Treat Patient, http://articles.philly.com/1994-03-22/news/25848994_1_aids-discrimination-aids-virus-aids-law-project (accessed March 23, 2013).

⁶⁹ See Smith and the United States of America v. Philadelphia, Settlement Agreement No. 03-6494.

potentially permanent negative psychological effects that stigma can have on an HIV-positive person, and based on the Commonwealth's ultimate goal of deterring representatives of places of public accommodation from stigmatizing HIV-positive persons. The amount of liquidated damages available under my statute is higher than what was prescribed in the ADA's language for civil penalties - my statute's liquidated damages clause states that stigmatizing public entities must pay a plaintiff no less than \$75,000 in damages for an initial violation and \$100,000 for any subsequent offenses.

Though cases such as the Milton-Hershey matter resulted in a settlement for a stigmatized HIV-positive child providing the plaintiff with significantly more money than what is prescribed by my statute, my law's liquidated damages clause must be reasonable to be enforceable. Additionally, the goal of my statute is to benefit the public health as a whole by reducing stigma just as much as it is to compensate the harmed, stigmatized HIV-positive individual. By including a liquidated damages clause in the initial contract between the state agency and the public entity, and requiring the public entity to subscribe to the terms of that clause as a pre-requisite for obtaining a license to operate, my statute attempts to ensure the reduction of HIV/AIDS-related stigma currently being employed by identifiable social service actors in Pennsylvania.

IV. Conclusion

The goal of my final product was to create a cause of action aimed at eradicating the stigmatization of HIV-positive individuals. I attempted to do this by drafting a statutory scheme for multiple types of damages that may be owed to HIV-positive individuals who experience stigmatization in places of public accommodation. I do not know if it is possible to change a particular individual's view of HIV/AIDS as a fearful, shameful condition. I also do not know if it is possible to change a particular

individual's perception of HIV-positive people. But I do know that with time and enforceability, the law has the ability to change the view of a generation. My hope is that by attacking the root of this problem – by fighting the source of discrimination, stigmatization – our society can begin to fathom a world where individuals are not treated differently or deprived rights because they are infected with HIV or AIDS. Stigma is fueled by fear, by a willingness and desire to view others differently in a negative sense. I would fully support a law that seeks to eradicate that willingness and desire from its inception, in the minds of those who have the power to allow their stigma to manifest in discriminatory acts.

Purdon’s Pennsylvania Statutes and Consolidated Statutes

Title 42. The Public Health and Welfare (Refs & Annos)

Chapter 30. HIV Stigmatization Act (Refs & Annos)

42 Pa.C.S. Consol. Stat. Ann. § 45401

§ 45401. Findings and Purpose

Currentness

(a) Findings

(1) A person infected with the Human Immunodeficiency Virus (“HIV”) or the virus’ more matured form, known as Acquired Immune Deficiency Syndrome (“AIDS”), is considered “HIV-positive” and is legally disabled for purposes of recovering under this Act.

(2) A person infected with HIV/AIDS is able to participate in the same societal activities as an uninfected individual. However, HIV-positive individuals are often precluded from doing so because of stigma.

(3) Stigma is a devastatingly powerful social mechanism used to stereotype certain groups of individuals. The stigma suffered by HIV-positive individuals is known as HIV/AIDS-related stigma.

(4) HIV/AIDS-related stigma is the social devaluing of people perceived to be HIV-positive, as well as the individuals, groups, and communities with which HIV-positive individuals associate.

(5) Academics have noted the negative impact of HIV/AIDS-related stigma on efforts to end HIV-proliferation and have studied how the process stigmatizing an HIV-positive person, known as stigmatization, negatively affects both individual and public health.

(6) The negative effects of HIV/AIDS-related stigma deter HIV-positive persons from getting tested for HIV/AIDS, from receiving necessary medical assistance, and from interacting with other members of society. These effects encourage ignorance that encourages unwarranted fear of the virus to flourish, ultimately contributing to the disease's proliferation.

(7) HIV/AIDS-related stigmatization can occur in public accommodation, including but not limited to places, facilities, and services such as:

- (a) the workplace,
- (b) educational facilities,
- (c) transportation services,
- (d) recreational facilities,
- (e) health services.

(8) A person infected with HIV/AIDS who experiences HIV/AIDS-related stigma suffers negative consequences including poor social support and fear of disclosing his or her HIV-positive status. These consequences deter a person from getting tested for HIV; from revealing the person's status to sexual partners, family members, and friends; and from seeking the medical and social assistance necessary to maintain the person's health. As a result of HIV/AIDS-related stigma, the stigmatized individual and the overall public health suffer.

(9) Studies document that HIV-positive individuals occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally.

(10) HIV/AIDS-related stigmatization denies an HIV-positive person the opportunity to compete on an equal basis and infringes upon the person's

constitutional rights. The stigmatization also costs the state significant funds in unnecessary expenses resulting from stigmatized individuals' dependency on limited government resources. Consequently, the Commonwealth suffers as a result of stigmatized persons' non-productivity.

(11) An owner or operator of a place of public accommodation who stigmatizes an HIV-positive person may be liable for the harm the HIV-positive person suffers as a result of the stigmatization. Pursuant to this statute, an HIV-positive individual may bring a claim against the stigmatizing public entity for compensatory damages, liquidated damages, and/or injunctive relief, if warranted. The stigmatized individual may file a complaint against the public entity privately or through the Pennsylvania Human Relations Commission ("PHRC"),⁷⁰ the state agency that enforces this Commonwealth's anti-discrimination laws.

(12) The Commonwealth's goal is that HIV-positive individuals be provided:

- (a) equality of opportunity,
- (b) full participation in social activities,
- (c) access to independent living,
- (d) the chance to be economically self-sufficient,
- (e) relief, if the HIV-positive person has been denied the aforementioned rights and privileges.

(b) Purpose

It is the purpose of this statute –

⁷⁰ See The Pennsylvania Human Relations Commission, http://www.portal.state.pa.us/portal/server.pt/community/phrc_home/18970/public_accommodations_discrimination/725474 (accessed May 9, 2013).

- (1) To provide a clear and comprehensive state-wide mandate for the elimination of HIV/AIDS-related stigmatization in Pennsylvania.
- (2) To provide clear and enforceable standards addressing and preventing against HIV/AIDS-related stigmatization.
- (3) To ensure that the Commonwealth plays a pivotal role in enforcing the standards established in this statute on behalf of HIV-positive persons.
- (4) To provide a framework for calculating the amount of damages that an HIV-positive person who suffers HIV/AIDS-related stigmatization may be entitled to.

Purdon's Pennsylvania Statutes and Consolidated Statutes

Title 42. The Public Health and Welfare (Refs & Annos)

Chapter 30. HIV Stigmatization Act (Refs & Annos)

42 Pa.C.S. Consol. Stat. Ann. § 45402

§ 45402. Definitions

Currentness

The following terms are defined as they are used in this statute, unless a different meaning clearly applies from the context in which they are applied:

- (1) HIV: human immunodeficiency virus; a retrovirus that causes AIDS by infecting helper T cells of the immune system.⁷¹
- (2) AIDS: acquired immune deficiency syndrome; an infectious, potentially fatal disease caused by the human immunodeficiency virus (HIV).⁷²
- (3) Stigma: a mark of disgrace or infamy; a stain or reproach, as on one's reputation.⁷³
- (4) Stigmatization: to set some mark of disgrace or infamy upon; to mark with a stigma or brand.⁷⁴
- (5) HIV-positive: a person diagnosed via a medical test administered by a medical professional as being infected with the HIV virus.⁷⁵

⁷¹ Farlex, The Free Medical Dictionary, <http://medical-dictionary.thefreedictionary.com/HIV> (accessed March 20, 2013).

⁷² Farlex, The Free Medical Dictionary, <http://medical-dictionary.thefreedictionary.com/AIDS> (accessed March 20, 2013).

⁷³ Farlex, The Free Medical Dictionary, <http://dictionary.reference.com/browse/stigma?s=t> (accessed March 20, 2013).

⁷⁴ Farlex, The Free Medical Dictionary, <http://dictionary.reference.com/browse/stigmatization?s=t> (accessed March 20, 2013).

⁷⁵ Farlex, The Free Medical Dictionary, <http://dictionary.reference.com/browse/HIV-positive?s=t> (accessed March 20, 2013).

(6) Damages: money claimed by, or ordered to be paid to, a person as compensation for loss or injury.⁷⁶

(7) Compensatory Damages: damages awarded to a person as compensation, indemnity, or restitution for harm sustained by him or her.¹ The primary object of a compensatory damage award, and the fundamental principle or theory on which it is based, is just compensation, indemnity, or reparation for the injured party's loss so that he or she may be made whole and restored as nearly as possible to the position or condition he or she would have been in had no breach of duty occurred.⁷⁷

(8) Liquidated Damages: a term of art originally derived from contract law, denotes the sum that a party to a contract agrees to pay if he or she breaks some promise and, which, having been arrived at by a good faith effort to estimate in advance the actual damage that will probably ensue from the breach, is legally recoverable if the breach occurs.⁷⁸

(9) Injunctive Relief: relief in the form of an injunction. “An ‘injunction’ has been very broadly defined as a court order prohibiting or commanding virtually any type of action, although in most instances an injunction prohibits rather than commands action and, thus, is usually preventive in nature.”⁷⁹

⁷⁶ Bryan A. Garner, *Black’s Law Dictionary*, (8th ed., West 2005)

⁷⁷ 1 Summ. Pa. Jur. 2d Torts § 9:4 (2d ed.)

⁷⁸ 16 Summ. Pa. Jur. 2d Commercial Law § 6:52 (2d ed.)

⁷⁹ 15 Standard Pennsylvania Practice 2d § 83:2

Pennsylvania Statutes and Consolidated Statutes

Title 42. The Public Health and Welfare (Refs & Annos)

Chapter 30. HIV Stigmatization Act (Refs & Annos)

42 Pa.C.S. Consol. Stat. Ann. § 45403

§ 45403. Prohibition of stigmatization against HIV-positive individuals in places
of public accommodation

Currentness

(a) General rule

An owner or operator of a place of public accommodation, in order to become authorized to operate within this Commonwealth by the appropriate State agency, shall agree that the entity's representatives will not stigmatize a person on the basis that the person is HIV-positive. A person is considered HIV-positive if he or she is infected with the Human Immunodeficiency Virus ("HIV"), or the virus' matured form, Acquired Immune Deficiency Syndrome ("AIDS").

(b) Construction

(1) General prohibitions

(A) Before becoming authorized by the appropriate State agency to administer services within this Commonwealth, an owner or operator of a place of public accommodation shall agree that the entity's representatives will not stigmatize against an HIV-positive individual or class of HIV-positive individuals directly or indirectly by denying an HIV-positive person the opportunity to participate in or benefit from:

(i) a good, service, facility, privilege, advantage, or accommodation of the entity,

(ii) an accommodation that is not equal to that afforded to other individuals,

(iii) an accommodation that is as effective as that provided to others.

(2) Required elements of a stigmatization claim under this Act

(A) Any stigmatized HIV-positive person may bring a claim for damages under this Act. To do so, the HIV-positive individual must, in good faith, show the following:

(i) an owner or operator of a place of public accommodation stigmatized the HIV-positive person through statements or actions.

(ii) a reasonable person would be capable of finding that the owner or operator's allegedly stigmatizing statement, action, or inaction is discriminatory in nature.

(iii) as a result of the stigmatization, the HIV-positive individual was discriminated against by the public entity. The HIV-positive person must show that he or she was denied a good, service, facility, privilege, or accommodation as described in subsection (b)(1)(A) of this statute.

(iv) the HIV-positive individual must show that he or she experienced emotional harm and/or suffering that a reasonable person could expect to experience as a result of being stigmatized.

(c) Damages and Relief

(1) Determination of Compensatory Damages

(A) An aggrieved person or persons who experience(s) a licensed public entity's HIV/AIDS-related stigmatization pursuant to subsection (b)(1) of this statute may recover compensatory damages for future pecuniary loss.

(2) Determination of Liquidated Damages

(A) An aggrieved person or persons who experience(s) a public entity's HIV/AIDS-related stigmatization pursuant to subsection (b)(1) of this statute may recover liquidated damages for his or her resulting:

- (i) emotional pain
- (ii) emotional suffering
- (iii) mental anguish
- (iv) loss of enjoyment of life
- (v) other non-pecuniary losses.

(B) The amount of liquidated damages available to an HIV-positive person stigmatized by an owner or operator of a place of public accommodation are to be directly payable to the stigmatized individual, in an amount totaling no less than \$75,000 for an entity's first offense and \$100,000 for any subsequent violations of this law.

(3) Determination of Injunctive Relief

(A) An aggrieved person who has experienced a public entity's HIV/AIDS-related stigmatization pursuant to subsection (b)(1) of this statute may be entitled to injunctive relief, if appropriate.