

ACT 308

S.B. NO. 1007

A Bill for an Act Relating to Health.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 325, Hawaii Revised Statutes, is amended by adding a new section, to be appropriately designated and to read as follows:

“§325- Informed consent for testing or disclosure. (a) No health care provider, blood bank, plasma center, or any other public or private agency, institution, or individual may subject a person’s body fluids or tissue to a test for the presence of human immunodeficiency virus (HIV) infection unless the subject of the test first provides informed written consent to the testing.

(b) Consent to testing is not required for any of the following:

- (1) Anatomical gifts. A health care provider or organ donor center which procures, processes, distributes, or uses human body parts donated for scientific purposes may, without obtaining consent to the testing, test for the presence of HIV in order to assure medical acceptability of the gift for the purpose intended.
- (2) Research. The department, laboratories and research facilities, health care providers, blood banks, plasma centers, and educational institutions may subject any body fluids or tissue to be used in research to a test for HIV infection if the test is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher.
- (3) Anonymous testing carried out at HIV test sites established by the department provided that informed verbal consent is obtained.
- (4) Testing of body fluids or tissue which is ordered by a third party, so long as that third party, including but not limited to an insurance company, employer, or school, obtains the informed written consent of the person to be tested authorizing the release of the test results to the third party, and transmits a signed copy of the written informed consent to the health provider prior to any release of the requested test results to the third party.

- (5) Health and safety of the client. Informed consent is not required when there is reason to believe that the safety of the client may be in imminent jeopardy because of possible HIV infection.
- (6) Health and safety of health care providers. Informed consent is not required when there is reason to believe that the safety of health care providers may be in imminent jeopardy due to exposure to the blood or bodily fluids of a patient suspected of possible HIV infection.

(c) Confidentiality. The confidentiality of all records held pursuant to this section is governed by section 325-101.

(d) Civil penalty. Any person or institution who willfully violates any provision of this section shall be fined not less than \$1,000 nor more than \$10,000 for each violation plus reasonable court costs and attorney's fees as determined by the court, which penalty and costs shall be paid to the person whose records were released. This subsection shall not be construed as limiting the right of any person or persons to recover actual damages.

(e) Good faith exception. No health care provider, blood bank, plasma center, or any other public or private agency, institution, or individual, which, in good faith, provides results of any test for the presence of HIV infection to a specified third party as the result and in response to an informed written consent by the person to be tested, shall be in violation of confidentiality requirements pursuant to this section and governed by section 325-101 if the test results later prove to be false or otherwise defective."

SECTION 2. If any provision of this Act or the application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 3. New statutory material is underscored¹.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 25, 1987.)

Note

- 1. Edited pursuant to HRS §23G-16.5.