

ACT 192

H.B. NO. 2268

A Bill for an Act Relating to Health.

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

SECTION 1. Section 325-16, Hawaii Revised Statutes, is amended to read as follows:

**“§325-16<sup>1</sup> 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.] Patient diagnosis or treatment. Informed consent is not required where the patient is unable to give consent and it is determined by the patient's treating physician that the patient's HIV status is necessary (A) to make a diagnosis, or (B) to determine an appropriate course of treatment for the patient. The patient shall be informed in a timely manner that a test for the presence of HIV has been performed pursuant to the provisions of this paragraph and the patient shall be provided the opportunity to obtain the test results and appropriate counselling.
- [(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.]
- (6) Protection of health care workers. A treating physician may order an HIV test without the patient's informed consent if the physician has determined that the patient is incapable of giving consent prior to the rendering of treatment and when there is reason to believe that the safety of health care providers may be affected due to exposure to the blood or bodily fluids of a patient suspected of possible HIV infection. The availability and quality of health care services shall not be compromised based on the findings and testing performed pursuant to this paragraph. The costs of any testing performed shall be borne by the health care provider and may not be claimed against the patient or the patient's health care insurer. The patient shall be informed in a timely manner that a test for the presence of HIV has been performed pursuant to the provisions of this paragraph, and the patient shall be provided the opportunity to obtain the test results and appropriate counselling.
- (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.

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(f) The department shall adopt rules, pursuant to chapter 91, to establish procedures and standards to implement this section.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 7, 1988.)

### Note

1. So in original.