

ACT 162

S.B. NO. 3306

A Bill for an Act Relating to Infectious and Communicable Diseases.

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

SECTION 1. Section 325-101, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The records of any person that indicate that a person has a human immunodeficiency virus (HIV) infection, AIDS related complex (ARC), or acquired immune deficiency syndrome (AIDS), which are held or maintained by any state agency, health care provider or facility, physician, laboratory, clinic, blood bank, third party payor, or any other agency, individual, or organization in the State shall be strictly confidential. For the purposes of this part, the term “records” shall be broadly construed to include all communication which identifies any individual who has HIV infection, ARC, or AIDS. This information shall not be released or made public upon subpoena or any other method of discovery. Notwithstanding any other provision to the contrary, release of the records protected under this part shall be permitted under the following circumstances:

- (1) Release is made to the department of health in order that it may comply with federal reporting requirements imposed on the State. The department shall ensure that personal identifying information from these records are protected from public disclosure;
- (2) Release is made of the records, or of specific medical or epidemiological information contained therein, with the prior written consent of the person or persons to whom the records pertain;
- (3) Release is made to medical personnel in a medical emergency only to the extent necessary to protect the health, life, or well-being of the named party;
- (4) Release [to or by] is made from a physician licensed pursuant to chapter 453 or 460 to the department of health [is necessary to protect the health and well-being of the general public; provided that release is made in such a way that no person can be identified, except as specified in paragraph (5);] to inform the sexual or needle sharing contact of an HIV seropositive patient where (A) there is reason for the physician to believe that the contact is or has been at risk of HIV transmission as a result of the index patient having engaged in conduct which is likely to transmit HIV, and (B) the index patient has first been counseled by the physician of the need for disclosure and the patient is unwilling to inform the contact directly or is unwilling to consent to the disclosure of the index patient's HIV status by the physician or the department of health; provided that the identity of the index patient is not disclosed; and provided further that there is no obligation to identify or locate any

contact. Any determination by a physician to disclose or withhold disclosure of an index patient's sexual contacts to the department of health pursuant to this subsection which is made in good faith shall not be subject to penalties under this part or otherwise subject to civil or criminal liability for damages under the laws of the State;

- (5) Release is made by the department of health of medical or epidemiological information from the records to medical personnel, appropriate county and state agencies, blood banks, plasma centers, organ and tissue banks, schools, preschools, day care centers, or county or district courts to enforce this part and to enforce rules adopted by the department of health concerning the control and treatment of HIV infection, ARC, and AIDS[.], or to the sexual or needle sharing contacts of an HIV seropositive index patient for purposes of contact notification as provided in paragraph (4), provided that the identity of the index patient, if known, shall not be disclosed; provided that release of information under this paragraph shall only be made by confidential communication to a designated individual charged with compliance with this part;
- (6) Release of a child's records is made to the department of human services for the purpose of enforcing chapters 350 and 587;
- (7) Release of a child's records is made within the department of human services and to child protective services team consultants under contract to the department of human services for the purpose of enforcing and administering chapters 350 and 587 on a need to know basis pursuant to a written protocol to be established and implemented, in consultation with the director of health, by the director of human services;
- (8) Release of a child's records is made by employees of the department of human services authorized to do so by the protocol established in paragraph (7) in a case arising under chapters 350 and 587 to a natural parent of a child who is the subject of the case when the natural parent is a client in the case, the guardian ad litem of the child, the court, each party to the court proceedings, and also to an adoptive or a prospective adoptive parent, an individual or an agency with whom the child is placed for twenty-four hour residential care, and medical personnel responsible for the care or treatment of the child. When a release is made to a natural parent of the child, it shall be with appropriate counseling as required by section 325-16. In no event shall proceedings be initiated against a child's natural parents for claims of child abuse under chapter 350 or harm to a child or to affect parental rights under chapter 587 solely on the basis of the HIV seropositivity of a child or the child's natural parents;
- (9) Release is made to the patient's health care insurer to obtain reimbursement for services rendered to the patient; provided that release shall not be made if, after being informed that a claim will be made to an insurer, the patient is afforded the opportunity to make the reimbursement directly and actually makes the reimbursement;
- (10) Release is made by the patient's health care provider to another health care provider for the purpose of continued care or treatment of the patient; [or]
- (11) Release is made pursuant to a court order, after an in camera review of the records, upon a showing of good cause by the party seeking the release of the records[.]; or

- (12) Disclosure by a physician, on a confidential basis, of the identity of a person who is HIV seropositive and who also shows evidence of tuberculosis infection, to a person within the department of health as designated by the director of health for purposes of evaluating the need for or the monitoring of tuberculosis chemotherapy for the person and the person's contacts who are at risk of developing tuberculosis.

As used in this part, unless the context requires otherwise:

“Medical emergency” means any disease-related situation that threatens life or limb.

“Medical personnel” means any health care provider in the State, as provided in section 323D-2, who deals directly or indirectly with the identified patient or the patient's contacts, and includes hospital emergency room personnel, the staff of the communicable disease division of the department of health, and any other department personnel as designated by the director.”

SECTION 2. Section 325-102, Hawaii Revised Statutes, is amended to read as follows:

“§325-102 Civil penalty. Any person or institution who wilfully violates any provision of this part 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 or persons whose records were released.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved June 8, 1992.)