

ACT 116

S.B. NO. 932

A Bill for an Act Relating to Infectious Disease Testing.

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

SECTION 1. An estimated twenty-five per cent of individuals infected with human immunodeficiency virus (HIV) do not know they are infected, because they have not been tested for HIV. In 2006, the Centers for Disease Control and Prevention recommended HIV screening as a routine part of medical care. However, research and experience indicate that the requirements for health care providers to obtain written informed consent and to provide pre-test HIV counseling are significant barriers to HIV testing. The purpose of this Act is to remove these identified barriers yet continue to allow for an individual to decline testing.

SECTION 2. Section 325-16, Hawaii Revised Statutes, is amended to read as follows:

“§325-16 Informed consent for testing or disclosure. (a) A health care provider may subject a person’s body fluids or tissue to a test for the presence of human immunodeficiency virus infection after:

- (1) Orally explaining to the person that certain personalized test results are maintained by the department of health, according to strict confidentiality protocols established by law;
- (2) Orally advising the person that free and anonymous human immunodeficiency virus testing is available through the department of health and certain community agencies;
- (3) Providing the person reasonable opportunity to decline the test; and
- (4) Receiving the person’s express oral consent to the test.

A health care provider may, for the purpose of obtaining consent to the test and in lieu of the oral-consent procedure specified in this subsection, use a written form that, at a minimum, provides equivalent information to that prescribed by paragraphs (a)(1) and (a)(2); provided that the health care provider shall allow the person reasonable opportunity to decline consent by declining to sign the form.

~~(a)~~ (b) No [health care provider,] blood bank, plasma center, or any other public or private agency, institution[,], or individual (except a health care provider acting pursuant to subsections (a) or (c)), 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~~]:

- (1) Provides informed written consent pursuant to the standards in section 671-3 to the testing~~[- Any person in this State whose body fluids or tissue are subject to a test for the presence of HIV infection shall be]; and~~
- (2) Is afforded the opportunity to receive [HIV] human immunodeficiency virus pre-test counseling by the party ordering or requesting that the test be performed [~~and shall be afforded the opportunity to obtain~~];

provided that the person tested shall be provided with the test results~~[- The counseling provided shall be consistent with guidelines established by the department.] by the blood bank, plasma center, agency, institution, or individual subjecting the person to the test. The opportunity to receive counseling shall be afforded both prior to obtaining a sample for [HIV] human immunodeficiency virus testing, and upon disclosure of the test results, regardless of the serostatus of the individual tested, except that testing conducted pursuant to subsection~~ [(b)(1)] (c)(1) and (2) shall be exempted from the counseling requirements of this subsection.

~~[(b)]~~ (c) Consent to testing is not required for any of the following:

- (1) A health care provider or organ donor center that procures, processes, distributes, or uses human body parts donated for scientific purposes, without obtaining consent, may test for the presence of [~~HIV in order~~] human immunodeficiency virus to assure medical acceptability of the gift for the purpose intended;
- (2) The department of health, 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~~] human immunodeficiency virus 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~~] human immunodeficiency virus test sites established by the department of health; provided that informed oral consent is obtained;
- (4) Testing of body fluids or tissue 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 care provider prior to any release of the requested test results to the third party~~];. The health care provider shall provide all positive and indeterminate human immunodeficiency virus test results and offer post-test counseling to those individuals with positive and indeterminate human immunodeficiency virus test results;~~
- (5) 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~~] human immunodeficiency virus status is necessary to make a diagnosis or 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~~] human immunodeficiency virus has been performed pursuant to this paragraph, and the [~~patient shall be provided the opportunity to obtain the test results and appropriate counseling;~~] health care provider shall provide all

positive and indeterminate human immunodeficiency virus test results and offer appropriate post-test counseling to those individuals with positive and indeterminate human immunodeficiency virus test results;

- (6) A treating physician may order ~~[an HIV]~~ a human immunodeficiency virus 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 a health care worker may be affected due to exposure to the blood or bodily fluids of a patient suspected of possible ~~[HIV]~~ human immunodeficiency virus 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 and the health care worker shall be informed in a timely manner that a test for the presence of ~~[HIV]~~ human immunodeficiency virus has been performed pursuant to the provisions of this paragraph ~~[- and the patient and the health care worker shall be provided the opportunity to obtain the test results and appropriate counseling;].~~ The health care provider shall provide all positive and indeterminate human immunodeficiency virus test results and offer appropriate post-test counseling to the individual being tested and afford the health care worker the opportunity to obtain the test results and appropriate post-test counseling;
- (7) A person who has been charged, or a juvenile who has been charged, pursuant to section 707-730, 707-731, 707-732(1)(a), 707-733.6, or 707-741 shall be tested to determine the person's ~~[HIV]~~ human immunodeficiency virus status upon court order issued pursuant to section 325-16.5. The test shall be performed according to the protocols set forth in section 325-17; and
- (8) A person who has been convicted, or a juvenile who has been adjudicated, pursuant to section 707-730, 707-731, 707-732(1)(a), 707-733.6, or 707-741 shall be tested to determine the person's ~~[HIV]~~ human immunodeficiency virus status upon court order issued pursuant to section 325-16.5. The test shall be performed according to the protocols set forth in section 325-17.

~~[(e) Confidentiality.]~~ (d) The confidentiality of all records held pursuant to this section is governed by section 325-101.

~~[(d) Civil penalty.]~~ (e) Any person or institution who wilfully 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)]~~ (f) The department of health shall make available to health care providers current information on accessing anonymous human immunodeficiency virus testing for the purpose of providing that information to patients.

(g) The department ~~[shall]~~ may adopt rules, pursuant to chapter 91, to establish procedures and standards to implement this section.

(h) As used in this section, "health care provider" means a physician or surgeon licensed under chapter 453, a podiatrist licensed under chapter 463E, a health care facility as defined in section 323D-2, and their employees. "Health care provider" shall not mean any nursing institution or nursing service conduct-

ed by and for those who rely upon treatment by spiritual means through prayer alone, or employees of such an institution or service.”

SECTION 3. Section 325-16.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any sexual assault victim, or the parent or guardian of a minor or incapacitated victim, shall be informed as soon as practicable after the assault, of the availability of human immunodeficiency virus [~~HIV~~] testing for the victim, the availability of counseling for the victim, and the right of the victim to request that the person charged with an offense listed in section [~~325-16(b)(7)~~] 325-16(c)(7), involving the victim, be tested for [~~HIV~~] human immunodeficiency virus. The victim, or the parent or guardian of a minor or incapacitated victim, and the charged person shall be provided [~~HIV~~] human immunodeficiency virus counseling prior to being tested, and follow-up counseling at the time the results are presented to the victim or the parent or guardian of a minor or incapacitated victim and the charged person.

Any sexual assault victim, or the parent or guardian of a minor or incapacitated victim, shall be informed as soon as practicable after a conviction, of the availability of human immunodeficiency virus [~~HIV~~] testing for the victim, the availability of counseling for the victim, and the right of the victim to demand that the person convicted of an offense listed in section [~~325-16(b)(8)~~] 325-16(c)(8), involving the victim, be tested for [~~HIV~~] human immunodeficiency virus. The victim, or the parent or guardian of a minor or incapacitated victim, and the convicted person shall be provided [~~HIV~~] human immunodeficiency virus counseling prior to being tested, and follow-up counseling at the time the results are presented to the victim or the parent or guardian of a minor or incapacitated victim and the convicted person.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon approval.

(Approved June 12, 2009.)