

# Enrolled Senate Bill 1507

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CHAPTER .....

AN ACT

Relating to HIV testing; amending ORS 109.610, 433.045, 433.055, 433.065, 433.075 and 433.085; and declaring an emergency.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1.** ORS 433.045 is amended to read:

433.045. (1) **As used in this section:**

(a) **“Health care provider” means an individual licensed by a health professional regulatory board, as that term is defined in ORS 676.160.**

(b) **“HIV test” means a test of an individual for the presence of HIV, or for antibodies or antigens that result from HIV infection, or for any other substance specifically indicating infection with HIV.**

(c) **“Insurance producer” has the meaning given that term in ORS 746.600.**

(d) **“Insurance-support organization” has the meaning given that term in ORS 746.600.**

(e) **“Insurer” has the meaning given that term in ORS 731.106.**

[(1)] (2) Except as provided in [subsection (6) of this section and] ORS 433.017, 433.055 (3) and 433.080, [no person shall subject the blood of an individual to an HIV test without first obtaining informed consent as described in subsection (2) or (7) of this section] **a health care provider or the provider’s designee shall, before subjecting an individual to an HIV test:**

(a) **Notify the individual being tested; and**

(b) **Allow the individual being tested the opportunity to decline the test.**

[(2) A physician licensed under ORS chapter 677 shall comply with the requirement of subsection (1) of this section through the procedure in ORS 677.097. Any other licensed health care provider or facility shall comply with the requirement of subsection (1) of this section through a procedure substantially similar to that specified in ORS 677.097. Any other person shall comply with this requirement through use of such forms, procedures and educational materials as the Oregon Health Authority shall specify.]

**(3) The notification and opportunity to decline testing required under subsection (2) of this section may be verbal or in writing, and may be contained in a general medical consent form.**

[(3)] (4)(a) Regardless of the manner of receipt or the source of the information, including information received from the tested individual, [no person shall] **a person may not** disclose or be compelled to disclose the identity of any individual upon whom an HIV-related test is performed,

or the results of such a test in a manner *[which]* **that** permits identification of the subject of the test, except as required or permitted by federal law, the law of this state or any rule, including any authority rule considered necessary for public health or health care purposes, or as authorized by the individual whose blood is tested.

**(b) This subsection does not apply to an individual acting in a private capacity and not in an employment, occupational or professional capacity.**

*[(4)]* **(5)** *[Any]* A person who complies with the requirements of this section *[shall not be]* **is not** subject to an action for civil damages.

*[(5)]* An HIV test shall be considered diagnosis of venereal disease for purposes of ORS 109.610.]

*[(6)]* The authority shall prescribe by rule a procedure whereby an individual who is housed in a state institution and is incapable of granting informed consent for an HIV test may be tested.]

*[(7)]* **(6)** Whenever an insurer, insurance producer or insurance-support organization asks an applicant for insurance to take an HIV test in connection with an application for insurance, the *[use of such a test must be revealed to the applicant and the written consent thereof obtained.]* **insurer, insurance producer or insurance-support organization must reveal the use of the test to the applicant and obtain the written consent of the applicant.** The consent form *[shall]* **must** disclose the purpose of the test and the persons to whom the results may be disclosed.

*[(8)]* As used in this section:]

*[(a)]* "HIV test" means a test of an individual for the presence of human immunodeficiency virus (HIV), or for antibodies or antigens that result from HIV infection, or for any other substance specifically indicating infection with HIV.]

*[(b)]* "Person" includes but is not limited to any health care provider, health care facility, clinical laboratory, blood or sperm bank, insurer, insurance producer, insurance-support organization, as defined in ORS 746.600, government agency, employer, research organization or agent of any of them. For purposes of subsection (3) of this section, "person" does not include an individual acting in a private capacity and not in an employment, occupational or professional capacity.]

*[(c)]* "State institution" means all campuses of the Oregon State Hospital, the Blue Mountain Recovery Center and the Eastern Oregon Training Center.]

**SECTION 2.** ORS 433.055 is amended to read:

433.055. (1) The Oregon Health Authority shall conduct studies of the prevalence of the HIV infection in this state. Its findings shall be reported to the Oregon Public Health Advisory Board, the Conference of Local Health Officials, the Emergency Board and other interested bodies at regular intervals, commencing in January 1988. The authority may cause the prevalence study of persons sentenced to the Department of Corrections of this state, as defined in ORS 421.005, to be made.

(2) The authority shall contract with an appropriate education agency to prepare a curriculum regarding HIV infection, acquired immune deficiency syndrome (AIDS) and prevention of the spread of AIDS for all school districts and offer workshops to prepare teachers and parents to implement the curriculum. The authority shall award incentive grants from funds available therefor to school districts to encourage use of the curriculum in the schools.

(3) Prior *[informed]* consent to HIV antibody testing need not be obtained from an individual if the test is for the purpose of research as authorized by the authority and if the testing is performed in a manner by which the identity of the test subject is not known, and may not be retrieved by the researcher.

**SECTION 3.** ORS 433.065 is amended to read:

433.065. (1) The Oregon Health Authority shall by rule prescribe procedures:

(a) Whereby a worker who has experienced an occupational exposure may request or cause to be requested the source person's voluntary *[informed]* consent to an HIV test;

(b) Whereby a person who, while being administered health care, has experienced a substantial exposure from a worker shall be given notice of such exposure and be given opportunity to request or cause to be requested the worker's voluntary *[informed]* consent to an HIV test; and

(c) Whereby a person who has experienced a substantial exposure shall be offered information about HIV infection, methods of preventing HIV infection and HIV tests.

(2) Rules prescribing procedures under subsection (1)(a) of this section may require the participation or intervention of the health care facility and licensed health care provider providing care to the source person and may require the further participation or intervention of the local public health administrator or local public health officer.

(3) Where the source person under subsection (1)(a) of this section is not known to be under the care of a health care facility or provider or cannot be located, and in the case of procedures under subsection (2) of this section, the rules may require the participation and intervention of the local public health administrator.

(4) The rules under this section may also include, but need not be limited to, time frames within which the notice and other procedures are to be performed and by whom, prescribed forms for reporting of exposures, and for recording of results of procedures undertaken and restrictions upon disclosure of such reports and records only to specific persons.

**(5) If the source person is deceased, the source person's next of kin may provide voluntary consent under this section.**

**SECTION 4.** ORS 433.075 is amended to read:

433.075. *[(1) The informed consent provisions of ORS 433.045 (1) and (2) apply to any request for consent to an HIV test under rules adopted pursuant to ORS 433.065.]*

*[(2) When a source person is deceased, consent for voluntary informed consent under ORS 433.065 shall be from the next of kin.]*

*[(3)] (1)* When an HIV test is performed pursuant to ORS 433.080 or rules adopted under ORS 433.065, the exposed person requesting the test, or the exposed person's employer in the case of an occupational exposure, shall be responsible for the cost of the testing.

*[(4)] (2) [Where] If* an employer provides a program of prevention, education and testing for HIV exposures for its employees, *[the] an* employee to be tested under *[the provisions of this Act] ORS 433.060 to 433.085* shall comply with the procedures provided by *[such] the* program. *[Such] The* program must be approved by the Oregon Health Authority.

*[(5)] (3)* When an HIV test is performed pursuant to ORS 433.080 or rules adopted under ORS 433.065, the results shall be reported confidentially to the person who suffered the substantial exposure giving rise to the test.

*[(6)] (4)* The confidentiality provisions of ORS 433.045 *[(3)] (4)* apply to any person who receives an HIV test result pursuant to ORS 433.080 or rules adopted under ORS 433.065. *[Any] A* person who complies with the requirements of this subsection *[shall not be] is not* subject to an action for damages.

**SECTION 5.** ORS 109.610 is amended to read:

109.610. (1) Notwithstanding any other provision of law, a minor who may have come into contact with any venereal disease, **including HIV**, may give consent to the furnishing of hospital, medical or surgical care related to the diagnosis or treatment of such disease, if the disease or condition is one which is required by law or regulation adopted pursuant to law to be reported to the local or state health officer or board. Such consent shall not be subject to disaffirmance because of minority.

(2) The consent of the parent, parents, or legal guardian of such minor shall not be necessary to authorize such hospital, medical or surgical care and without having given consent the parent, parents, or legal guardian shall not be liable for payment for any such care rendered.

**SECTION 6.** ORS 433.085 is amended to read:

433.085. (1) Notwithstanding any other provision of law, any employee of the Department of Corrections, law enforcement officer as defined in ORS 414.805, parole and probation officer, corrections officer, emergency medical services provider, licensed health care provider or firefighter who in the performance of the individual's official duties comes into contact with the bodily fluids of another person may seek to have the source person tested for HIV and hepatitis B or C by petitioning the circuit court for an order compelling the testing.

(2) The petition submitted to the court must set forth the facts and circumstances of the contact and the reasons the petitioner and a medically trained person representing the petitioner, if available, believe the exposure was substantial and the testing would be appropriate. The petition must also include information sufficient to identify the alleged source person and the location of the alleged source person, if known. The court shall hold an ex parte hearing in person or by telephone on the day of receipt of the petition, if possible, or within a reasonable period not to exceed three judicial days. Upon a showing that the petitioner has been exposed to the bodily fluids of another person and the circumstances create probable cause to conclude that a significant possibility exists that the petitioner has been exposed to HIV or hepatitis B or C, the court shall order the testing of the source person.

(3) If the court orders a test under subsection (2) of this section:

(a) The order shall direct the source person to allow the required test to be performed by a licensed health care provider without delay and may specify a time when the test must be completed. If the source person is in custody or otherwise subject to the legal control of another person, the order may be directed to the agency with custody of, or the other person with legal control over, the source person and direct the agency or other person to provide the source person with a copy of the order and ensure that the required test is performed.

(b) The petitioner shall designate a physician or nurse practitioner to receive the test results on behalf of the petitioner.

(c) The order must inform the source person, agency or other person of who is to receive the results of the test and of how to obtain payment for costs under subsection (6) of this section.

(d) The order shall be served on the source person, or the agency with custody of or other person with legal control over the source person, in the manner directed by the court. The court may provide for service of the order by any means appropriate to the circumstances of the source person, including but not limited to service by the petitioner or by directing the sheriff to serve the order. Any costs of service shall be paid as provided under subsection (6) of this section.

(e) The order is enforceable through the contempt powers of the court.

(4) The results of any test ordered under this section are confidential and subject to the confidentiality provisions of ORS 433.045 [(3)] (4). The results shall be made available only to those persons authorized under ORS 433.045 [(3)] (4) and to the petitioner, any physician or nurse practitioner designated by the petitioner to receive the results, the Oregon Health Authority and the source person.

(5) If the test results are negative, the court may order the source person to submit to additional testing six months after the first test was conducted.

(6) No charge or filing fee may be imposed for the filing of a petition under this section. The cost of any testing ordered under this section shall be the responsibility of the employer of the petitioner.

**SECTION 7. This 2012 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect on its passage.**

**Passed by Senate February 9, 2012**

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

**Passed by House February 21, 2012**

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

**Received by Governor:**

.....M,....., 2012

**Approved:**

.....M,....., 2012

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John Kitzhaber, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2012

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Kate Brown, Secretary of State