

Senate Bill 1507

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Health Care, Human Services and Rural Health Policy)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Removes requirement that person subjected to HIV test give specific informed consent to test. Requires that person be notified of test and be given opportunity to decline test.
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to HIV testing; amending ORS 109.610, 433.045, 433.055, 433.065, 433.075 and 433.085; and
3 declaring an emergency.

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

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

6 433.045. (1) **As used in this section:**

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

10 (b) **"Insurance producer" has the meaning given that term in ORS 746.600.**

11 (c) **"Insurance-support organization" has the meaning given that term in ORS 746.600.**

12 (d) **"Insurer" has the meaning given that term in ORS 731.106.**

13 (e) **"Person" includes but is not limited to any health care provider, health care facility,**
14 **clinical laboratory, blood or sperm bank, insurer, insurance producer, insurance-support or-**
15 **ganization, government agency, employer or research organization or an agent of any of the**
16 **entities listed in this paragraph.**

17 [(1)] (2) Except as provided in [*subsection (6) of this section and*] ORS 433.017, 433.055 (3) and
18 433.080, [*no person shall subject the blood of an individual to*] **a person may not perform** an HIV
19 test without first [*obtaining informed consent as described in subsection (2) or (7) of this section*]:

20 (a) **Notifying the individual being tested; and**

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

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

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

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 [(3)] **(4)(a)** Regardless of the manner of receipt or the source of the information, including in-
 2 formation received from the tested individual, *[no person shall]* **a person may not** disclose or be
 3 compelled to disclose the identity of any individual upon whom an HIV-related test is performed, or
 4 the results of such a test in a manner *[which]* **that** permits identification of the subject of the test,
 5 except as required or permitted by federal law, the law of this state or any rule, including any au-
 6 thority rule considered necessary for public health or health care purposes, or as authorized by the
 7 individual whose blood is tested.

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

10 [(4)] **(5)** *[Any]* **A** person who complies with the requirements of this section *[shall not be]* **is not**
 11 subject to an action for civil damages.

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

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

15 [(7)] **(6)** Whenever an insurer, insurance producer or insurance-support organization asks an
 16 applicant for insurance to take an HIV test in connection with an application for insurance, the
 17 *[use of such a test must be revealed to the applicant and the written consent thereof obtained.]* **insurer,**
 18 **insurance producer or insurance-support organization must reveal the use of the test to the**
 19 **applicant and obtain the written consent of the applicant.** The consent form *[shall]* **must** dis-
 20 close the purpose of the test and the persons to whom the results may be disclosed.

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

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

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

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

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

33 433.055. (1) The Oregon Health Authority shall conduct studies of the prevalence of the HIV
 34 infection in this state. Its findings shall be reported to the Oregon Public Health Advisory Board,
 35 the Conference of Local Health Officials, the Emergency Board and other interested bodies at reg-
 36 ular intervals, commencing in January 1988. The authority may cause the prevalence study of per-
 37 sons sentenced to the Department of Corrections of this state, as defined in ORS 421.005, to be made.

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

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

1 researcher.

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

3 433.065. (1) The Oregon Health Authority shall by rule prescribe procedures:

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

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

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

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

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

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

23 **(5) If the source person is deceased, the source person's next of kin may provide volun-**
24 **tary consent under this section.**

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

26 433.075. [(1) *The informed consent provisions of ORS 433.045 (1) and (2) apply to any request for*
27 *consent to an HIV test under rules adopted pursuant to ORS 433.065.*]

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

30 [(3)] (1) When an HIV test is performed pursuant to ORS 433.080 or rules adopted under ORS
31 433.065, the exposed person requesting the test, or the exposed person's employer in the case of an
32 occupational exposure, shall be responsible for the cost of the testing.

33 [(4)] (2) [Where] **If** an employer provides a program of prevention, education and testing for HIV
34 exposures for its employees, [the] **an** employee to be tested under [the provisions of this Act] **ORS**
35 **433.060 to 433.085** shall comply with the procedures provided by [such] **the** program. [Such] **The**
36 program must be approved by the Oregon Health Authority.

37 [(5)] (3) When an HIV test is performed pursuant to ORS 433.080 or rules adopted under ORS
38 433.065, the results shall be reported confidentially to the person who suffered the substantial ex-
39 posure giving rise to the test.

40 [(6)] (4) The confidentiality provisions of ORS 433.045 [(3)] (4) apply to any person who receives
41 an HIV test result pursuant to ORS 433.080 or rules adopted under ORS 433.065. [Any] **A** person
42 who complies with the requirements of this subsection [shall not be] **is not** subject to an action for
43 damages.

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

45 109.610. (1) Notwithstanding any other provision of law, a minor who may have come into con-

1 tact with any venereal disease, **including HIV**, may give consent to the furnishing of hospital,
2 medical or surgical care related to the diagnosis or treatment of such disease, if the disease or
3 condition is one which is required by law or regulation adopted pursuant to law to be reported to
4 the local or state health officer or board. Such consent shall not be subject to disaffirmance because
5 of minority.

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

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

10 433.085. (1) Notwithstanding any other provision of law, any employee of the Department of
11 Corrections, law enforcement officer as defined in ORS 414.805, parole and probation officer, cor-
12 rections officer, emergency medical services provider, licensed health care provider or firefighter
13 who in the performance of the individual's official duties comes into contact with the bodily fluids
14 of another person may seek to have the source person tested for HIV and hepatitis B or C by peti-
15 tioning the circuit court for an order compelling the testing.

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

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

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

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

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

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

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

43 (4) The results of any test ordered under this section are confidential and subject to the
44 confidentiality provisions of ORS 433.045 [(3)] (4). The results shall be made available only to those
45 persons authorized under ORS 433.045 [(3)] (4) and to the petitioner, any physician or nurse practi-

1 tioner designated by the petitioner to receive the results, the Oregon Health Authority and the
2 source person.

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

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

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

11
