

**Enrolled**  
**Senate Bill 160**

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 Governor Theodore R. Kulongoski for Department of Human Services)

CHAPTER .....

AN ACT

Relating to HIV testing of individuals in state institutions; amending ORS 433.045; 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) 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.

(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 Department of Human Services shall specify.

(3) Regardless of the manner of receipt or the source of the information, including information received from the tested individual, no person shall 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 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 Department of Human Services rule considered necessary for public health or health care purposes, or as authorized by the individual whose blood is tested.

(4) Any person who complies with the requirements of this section shall not be 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) 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.]*

**(6) The Department of Human Services 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) 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. The consent form shall 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.** This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

Passed by Senate February 25, 2009

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Secretary of Senate

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President of Senate

Passed by House March 16, 2009

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Speaker of House

Received by Governor:

.....M.,....., 2009

Approved:

.....M.,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2009

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Secretary of State