

Senate Bill 160

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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**.

Requires Department of Human Services to adopt by rule procedure for authorizing HIV test of individuals in certain state institutions who are incapable of granting informed consent.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to HIV testing of individuals in state institutions; amending ORS 433.045; and declaring an
3 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) Except as provided in **subsection (6) of this section and** ORS 433.017, 433.055 (3)
7 and 433.080, no person shall subject the blood of an individual to an HIV test without first obtaining
8 informed consent as described in subsection (2) or (7) of this section.

9 (2) A physician licensed under ORS chapter 677 shall comply with the requirement of subsection
10 (1) of this section through the procedure in ORS 677.097. Any other licensed health care provider
11 or facility shall comply with the requirement of subsection (1) of this section through a procedure
12 substantially similar to that specified in ORS 677.097. Any other person shall comply with this re-
13 quirement through use of such forms, procedures and educational materials as the Department of
14 Human Services shall specify.

15 (3) Regardless of the manner of receipt or the source of the information, including information
16 received from the tested individual, no person shall disclose or be compelled to disclose the identity
17 of any individual upon whom an HIV-related test is performed, or the results of such a test in a
18 manner which permits identification of the subject of the test, except as required or permitted by
19 federal law, the law of this state or any rule, including any Department of Human Services rule
20 considered necessary for public health or health care purposes, or as authorized by the individual
21 whose blood is tested.

22 (4) Any person who complies with the requirements of this section shall not be subject to an
23 action for civil damages.

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

25 *[(6) As used in this section:]*

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

29 *[(b) "Person" includes but is not limited to any health care provider, health care facility, clinical*
30 *laboratory, blood or sperm bank, insurer, insurance producer, insurance-support organization, as de-*

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 *fined in ORS 746.600, government agency, employer, research organization or agent of any of them.*
2 *For purposes of subsection (3) of this section, "person" does not include an individual acting in a pri-*
3 *vate capacity and not in an employment, occupational or professional capacity.]*

4 **(6) The Department of Human Services shall prescribe by rule a procedure whereby an**
5 **individual incapable of granting informed consent for an HIV test may be tested.**

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

10 **(8) As used in this section:**

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

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

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

22 **SECTION 2. This 2009 Act being necessary for the immediate preservation of the public**
23 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
24 **on its passage.**

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