



GOV. MSG. NO. 733

EXECUTIVE CHAMBERS

HONOLULU

LINDA LINGLE  
GOVERNOR

June 12, 2009

The Honorable Colleen Hanabusa, President  
and Members of the Senate  
Twenty-Fifth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on June 12, 2009, the following bill was signed into law:

SB932 SD2 HD2 CD1

A BILL FOR AN ACT  
RELATING TO INFECTIOUS DISEASE TESTING.  
**ACT 116 (09)**

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

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# A BILL FOR AN ACT

RELATING TO INFECTIOUS DISEASE TESTING.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

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

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

14           "§325-16 Informed consent for testing or disclosure. (a)

15 A health care provider may subject a person's body fluids or  
16 tissue to a test for the presence of human immunodeficiency  
17 virus infection after:



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

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

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



1 subsections (a) or (c)), may subject a person's body fluids or  
2 tissue to a test for the presence of human immunodeficiency  
3 virus [~~(HIV)~~] infection unless the subject of the test [~~first~~  
4 ~~provides~~]:

- 5 (1) Provides informed written consent pursuant to the  
6 standards in section 671-3 to the testing [~~— Any~~  
7 ~~person in this State whose body fluids or tissue are~~  
8 ~~subject to a test for the presence of HIV infection~~  
9 ~~shall be~~]; and
- 10 (2) Is afforded the opportunity to receive [~~HIV~~] human  
11 immunodeficiency virus pre-test counseling by the  
12 party ordering or requesting that the test be  
13 performed [~~and shall be afforded the opportunity to~~  
14 ~~obtain~~];
- 15 provided that the person tested shall be provided with the test  
16 results [~~— The counseling provided shall be consistent with~~  
17 ~~guidelines established by the department.~~] by the blood bank,  
18 plasma center, agency, institution, or individual subjecting the  
19 person to the test. The opportunity to receive counseling shall  
20 be afforded both prior to obtaining a sample for [~~HIV~~] human  
21 immunodeficiency virus testing, and upon disclosure of the test  
22 results, regardless of the serostatus of the individual tested,



1 except that testing conducted pursuant to subsection [~~(b)~~(1)]  
2 (c) (1) and (2) shall be exempted from the counseling  
3 requirements of this subsection.

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

6 (1) A health care provider or organ donor center that  
7 procures, processes, distributes, or uses human body  
8 parts donated for scientific purposes, without  
9 obtaining consent, may test for the presence of [~~HIV~~  
10 ~~in order~~] human immunodeficiency virus to assure  
11 medical acceptability of the gift for the purpose  
12 intended;

13 (2) The department of health, laboratories and research  
14 facilities, health care providers, blood banks, plasma  
15 centers, and educational institutions may subject any  
16 body fluids or tissue to be used in research to a test  
17 for [~~HIV~~] human immunodeficiency virus infection if  
18 the test is performed in a manner by which the  
19 identity of the test subject is not known and may not  
20 be retrieved by the researcher;

21 (3) Anonymous testing carried out at [~~HIV~~] human  
22 immunodeficiency virus test sites established by the



1 department of health; provided that informed oral  
2 consent is obtained;

3 (4) Testing of body fluids or tissue ordered by a third  
4 party, so long as that third party, including [~~but not~~  
5 ~~limited to~~] an insurance company, employer, or school,  
6 obtains the informed written consent of the person to  
7 be tested authorizing the release of the test results  
8 to the third party, and transmits a signed copy of the  
9 written informed consent to the health care provider  
10 prior to any release of the requested test results to  
11 the third party[+]. The health care provider shall  
12 provide all positive and indeterminate human  
13 immunodeficiency virus test results and offer post-  
14 test counseling to those individuals with positive and  
15 indeterminate human immunodeficiency virus test  
16 results;

17 (5) Informed consent is not required where the patient is  
18 unable to give consent and it is determined by the  
19 patient's treating physician that the patient's [HIV]  
20 human immunodeficiency virus status is necessary to  
21 make a diagnosis or determine an appropriate course of  
22 treatment for the patient. The patient shall be



1 informed in a timely manner that a test for the  
2 presence of [HIV] human immunodeficiency virus has  
3 been performed pursuant to this paragraph, and the  
4 ~~[patient shall be provided the opportunity to obtain~~  
5 ~~the test results and appropriate counseling,]~~ health  
6 care provider shall provide all positive and  
7 indeterminate human immunodeficiency virus test  
8 results and offer appropriate post-test counseling to  
9 those individuals with positive and indeterminate  
10 human immunodeficiency virus test results;

- 11 (6) A treating physician may order [~~an HIV~~] a human  
12 immunodeficiency virus test without the patient's  
13 informed consent if the physician has determined that  
14 the patient is incapable of giving consent prior to  
15 the rendering of treatment and when there is reason to  
16 believe that the safety of a health care worker may be  
17 affected due to exposure to the blood or bodily fluids  
18 of a patient suspected of possible [HIV] human  
19 immunodeficiency virus infection. The availability  
20 and quality of health care services shall not be  
21 compromised based on the findings and testing  
22 performed pursuant to this paragraph. The costs of



1 any testing performed shall be borne by the health  
2 care provider and may not be claimed against the  
3 patient or the patient's health care insurer. The  
4 patient and the health care worker shall be informed  
5 in a timely manner that a test for the presence of  
6 [HIV] human immunodeficiency virus has been performed  
7 pursuant to the provisions of this paragraph [~~and~~  
8 ~~the patient and the health care worker shall be~~  
9 ~~provided the opportunity to obtain the test results~~  
10 ~~and appropriate counseling;]. The health care  
11 provider shall provide all positive and indeterminate  
12 human immunodeficiency virus test results and offer  
13 appropriate post-test counseling to the individual  
14 being tested and afford the health care worker the  
15 opportunity to obtain the test results and appropriate  
16 post-test counseling;~~

- 17 (7) A person who has been charged, or a juvenile who has  
18 been charged, pursuant to section 707-730, 707-731,  
19 707-732(1)(a), 707-733.6, or 707-741 shall be tested  
20 to determine the person's [HIV] human immunodeficiency  
21 virus status upon court order issued pursuant to  
22 section 325-16.5. The test shall be performed





1 according to the protocols set forth in section  
2 325-17; and

3 (8) A person who has been convicted, or a juvenile who has  
4 been adjudicated, pursuant to section 707-730,  
5 707-731, 707-732(1)(a), 707-733.6, or 707-741 shall be  
6 tested to determine the person's [~~HIV~~] human  
7 immunodeficiency virus status upon court order issued  
8 pursuant to section 325-16.5. The test shall be  
9 performed according to the protocols set forth in  
10 section 325-17.

11 [~~(c) Confidentiality.~~] (d) The confidentiality of all  
12 records held pursuant to this section is governed by section  
13 325-101.

14 [~~(d) Civil penalty.~~] (e) Any person or institution who  
15 wilfully violates any provision of this section shall be fined  
16 not less than \$1,000 nor more than \$10,000 for each violation  
17 plus reasonable court costs and attorney's fees as determined by  
18 the court, which penalty and costs shall be paid to the person  
19 whose records were released. This subsection shall not be  
20 construed as limiting the right of any person or persons to  
21 recover actual damages.



1        ~~(e)~~ (f) The department of health shall make available to  
2 health care providers current information on accessing anonymous  
3 human immunodeficiency virus testing for the purpose of  
4 providing that information to patients.

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

8        (h) As used in this section, "health care provider" means a  
9 physician or surgeon licensed under chapter 453, a podiatrist  
10 licensed under chapter 463E, a health care facility as defined  
11 in section 323D-2, and their employees. "Health care provider"  
12 shall not mean any nursing institution or nursing service  
13 conducted by and for those who rely upon treatment by spiritual  
14 means through prayer alone, or employees of such an institution  
15 or service."

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

18        "(a) Any sexual assault victim, or the parent or guardian  
19 of a minor or incapacitated victim, shall be informed as soon as  
20 practicable after the assault, of the availability of human  
21 immunodeficiency virus ~~(HIV)~~ testing for the victim, the  
22 availability of counseling for the victim, and the right of the



1 victim to request that the person charged with an offense listed  
2 in section [~~325-16(b)(7)~~] 325-16(c)(7), involving the victim, be  
3 tested for [~~HIV~~] human immunodeficiency virus. The victim, or  
4 the parent or guardian of a minor or incapacitated victim, and  
5 the charged person shall be provided [~~HIV~~] human  
6 immunodeficiency virus counseling prior to being tested, and  
7 follow-up counseling at the time the results are presented to  
8 the victim or the parent or guardian of a minor or incapacitated  
9 victim and the charged person.

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



1 the victim or the parent or guardian of a minor or incapacitated  
2 victim and the convicted person."

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

5 SECTION 5. This Act shall take effect upon approval.

APPROVED this 12 day of JUN, 2009



GOVERNOR OF THE STATE OF HAWAII