

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

HOUSE BILL NO. 2313

By: Thomas

AS INTRODUCED

An Act relating to public health and safety; amending 63 O.S. 1991, Section 1-502.3, as amended by Section 2, Chapter 144, O.S.L. 1992, 1-523 as last amended by Section 1, Chapter 58, O.S.L. 1994, and 1-525 (63 O.S. Supp. 1995, Section 1-502.3 and 1-523), which relate to confidential records and testing of persons with the human immunodeficiency virus (HIV); requiring release of certain records and information to certain funeral directors and embalmers; providing for release of liability; amending 59 O.S. 1991, Section 396.27, which relates to notification to certain employees of risk exposure; requiring certain employee notification of deceased persons who have the HIV; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 63 O.S. 1991, Section 1-502.3, as amended by Section 2, Chapter 144, O.S.L. 1992 (63 O.S. Supp. 1995, Section 1-502.3), is amended to read as follows:

Section 1-502.3 A. No person who withdraws or tests blood for human immunodeficiency virus ~~or~~, employer of such person ~~nor~~ or any hospital or health care facility where blood is withdrawn or tested for human immunodeficiency virus shall incur any civil or criminal liability as a result of the proper withdrawal of blood or testing for human immunodeficiency virus when acting in compliance with the provisions of this section. The withdrawal or testing shall be performed in a reasonable manner, according to generally accepted clinical practice. The person, employer or facility shall be presented with:

1. A written statement by the person whose blood is to be withdrawn and tested; or

2. A written statement from a health care or emergency care worker verifying that the health care or emergency care worker in an occupational setting has been exposed to the bodily fluids of the person whose blood is to be withdrawn and tested, which exposure placed the health care or emergency care worker at risk for transfer of the bodily fluids; or

3. An order from a court of competent jurisdiction that blood be withdrawn and tested.

When presented with such a statement or court order, the person authorized to withdraw the blood, the employer and the hospital or other health care facility where the withdrawal or testing occurs may rely on such statement or order as evidence that the person has consented to or has been required to submit to the clinical procedure and shall not be required to obtain any additional consent, acknowledgement or waiver form. In such case, the person authorized to perform the procedure, the employer of such person, and the hospital or other health care facility shall not be liable in any action alleging lack of consent or lack of informed consent.

B. No person specified in this section shall incur any civil or criminal liability for:

1. Providing results of the testing to:
 - a. the person whose blood was tested,
 - b. the person incurring the exposure, ~~or~~
 - c. in the event a person who has been tested pursuant to this section, the funeral director or embalmer who will be or is preparing the body for burial or other disposition, or
 - d. the State Department of Health or such agency it may designate;

2. Not providing the results of the testing to any other person; or

3. Failing to diagnose or falsely diagnosing the presence of the human immunodeficiency virus where the procedure was performed in a reasonable manner according to generally accepted clinical practice.

C. For the purposes of this section:

1. "Bodily fluids" means fluids which have been medically proven and medically accepted as transmitters or conductors of human immunodeficiency virus; and

2. "Health care worker" or "emergency care worker" means one of the persons specified in subsection A of Section 1-502.1 of this title.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-502.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

Any hospital, physician or other person who is responsible for the release of the body of a person who has been tested positive for the human immunodeficiency virus (HIV) to a funeral director or embalmer who will be preparing the body for burial or other disposition shall notify, in writing, the funeral director or embalmer of the positive test upon first call as the term is defined by the Funeral Services Licensing Act.

SECTION 3. AMENDATORY 63 O.S. 1991, Section 1-523, as last amended by Section 1, Chapter 58, O.S.L. 1994 (63 O.S. Supp. 1995, Section 1-523), is amended to read as follows:

Section 1-523. A. Any and all institutions in this state, whether penal or eleemosynary, and whether public or private, and free or for pay, shall make, and preserve for a period of at least one (1) year, a record showing the name, age, sex, color, nationality and place of residence of all infected persons of the inmates of such institution that may come to their knowledge, and shall submit such record at all reasonable hours to the inspection of the Commissioner of Health or local health officer.

B. All such institutions shall furnish a physician and all proper medicines, instruments and apparatus for the proper treatment of such infected persons.

C. Each institution and each Department of Corrections district office and each county or municipal jail shall notify their correctional officers, probation and parole officers and any jailor or other employee or any employee of the Pardon and Parole Board who has or will have direct contact with an inmate when such inmate is infected with the human immunodeficiency virus (HIV) or has the Acquired Immune Deficiency Syndrome (AIDS) disease.

D. In the event a person who has been tested positive for the human immunodeficiency virus (HIV) dies, each institution in this state, whether penal or eleemosynary, and whether public or private, shall notify the funeral director or the embalmer who will be preparing the body for burial or other disposition by written notice as to the positive test upon first call as the term is defined by the Funeral Services Licensing Act.

SECTION 4. AMENDATORY 63 O.S. 1991, Section 1-525, is amended to read as follows:

Section 1-525. A. 1. Except as otherwise provided by law, the prescription and records required by ~~the foregoing provisions~~

Sections 1-522 and 1-523 of this title to be filed and ~~kept~~ maintained shall not be ~~exposed~~ released or opened to any person other than the State Commissioner of Health or local health officer, or in the event a person has been tested positive for human immunodeficiency virus (HIV), to the funeral director or embalmer who will be or is preparing the body for burial or other disposition, or when properly ordered by a court of competent jurisdiction to be used as evidence in such court, ~~and no.~~

2. No information ~~whatever~~ shall be given to any person concerning any infected person except to ~~appropriate persons for use in the proper courts of this state~~ authorized pursuant to Sections 1-502.1 through 1-532.1 of this title to receive such information.

~~Provided, that records~~ 3. Records of diagnosis and treatment may be transmitted to physicians and to health authorities in this and other states upon written request of the person affected.

~~Provided further, results~~

B. 1. Results of examinations conducted on persons arrested by lawful warrant for the offense of first or second degree rape, forcible sodomy, or intentional infection or attempted infection of a person with the human immunodeficiency virus, shall be provided to the alleged victim of the crime upon the request of the victim, the parent of the victim if the victim is a minor, or upon request of the legal guardian or custodian of the victim.

2. The name of the arrested and examined person shall not be disclosed on the transmitted record. The State Department of Health shall provide to the victims the positive test results.

3. The Department shall provide free testing to the alleged victim for any venereal or communicable disease for which the arrestee tests positive, as indicated in the transmitted record of diagnosis.

4. Such testing shall be accompanied with pretest and post-test counseling. Such counseling shall include the provision of

information to the victim or the parent, legal guardian or custodian of the victim concerning the venereal or communicable disease indicated in the transmitted record and the location of public and private facilities in the vicinity offering tests and counseling for persons who have the venereal or communicable disease.

~~B.~~ C. The State Board of Health shall promulgate rules ~~and regulations~~ for the examination authorized or required by Section 1-524 of this title and for the release of records containing results of examinations authorized by ~~subsection~~ subsections A and B of this section. The rules ~~and regulations~~ shall establish procedural guidelines which respect the rights of the person arrested for the alleged offense and the victim of the alleged offense.

SECTION 5. AMENDATORY 59 O.S. 1991, Section 396.27, is amended to read as follows:

Section 396.27 A. Each funeral director shall notify employees concerning risk exposures pursuant to Section ~~1 of this act~~ 1-502.1 of Title 63 of the Oklahoma Statutes and the rules and guidelines promulgated by the State Board of Health.

B. Each funeral director and each employee of such funeral director shall adhere to the universal precautions for the prevention of the transmission of communicable diseases published by the Centers for Disease Control, U.S. Public Health Service, in the Morbidity and Mortality Weekly Report, Volume 36, Number 2S or as subsequently amended, during the handling of any body.

C. If a funeral director or embalmer has been notified that a deceased person has been tested positive for the human immunodeficiency virus (HIV), the funeral director or embalmer shall notify any person who may be transporting the body or preparing the body for burial or other disposition of the positive test.

SECTION 6. This act shall become effective November 1, 1996.

