

REFERENCE TITLE: HIV-related testing

State of Arizona  
Senate  
Forty-eighth Legislature  
Second Regular Session  
2008

# SB 1113

Introduced by  
Senator Allen

AN ACT

AMENDING SECTION 36-663, ARIZONA REVISED STATUTES; RELATING TO COMMUNICABLE  
DISEASE INFORMATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 36-663, Arizona Revised Statutes, is amended to  
3 read:

4 36-663. HIV-related testing; restrictions; exceptions

5 A. Except as otherwise specifically authorized or required by this  
6 state or by federal law, ~~no person may order the performance of an~~  
7 ~~HIV related test within a hospital licensed pursuant to chapter 4, article 2~~  
8 ~~of this title without first receiving the specific written informed consent~~  
9 ~~of the subject of the test who has capacity to consent or, if the subject~~  
10 ~~lacks capacity to consent, of the subject's health care decision maker.~~  
11 ~~Before ordering the performance of an HIV-related test as a part of a patient~~  
12 ~~examination or consultation conducted outside a hospital licensed pursuant to~~  
13 ~~chapter 4, article 2 of this title, a health care provider licensed pursuant~~  
14 ~~to title 32, chapter 13, 17 or 29, a nurse practitioner certified pursuant to~~  
15 ~~title 32, chapter 15 or a physician assistant certified pursuant to title 32,~~  
16 ~~chapter 25 shall obtain specific~~ BEFORE AN HIV-RELATED TEST IS ORDERED BY A  
17 HEALTH CARE PROVIDER, THE HEALTH CARE PROVIDER SHALL ENSURE THAT oral or  
18 written informed consent ~~of~~ INFORMATION IS PROVIDED TO the subject of the  
19 test who has capacity to consent or, if the subject lacks capacity to  
20 consent, of a person authorized pursuant to law to consent to health care for  
21 that person. ~~Other health care providers who are licensed pursuant to title~~  
22 ~~32 and who are allowed to provide HIV-related tests within their scope of~~  
23 ~~practice shall obtain specific written informed consent. Written consent~~  
24 ~~shall be in a form as prescribed by the department except for entities~~  
25 ~~complying with the form prescribed by section 20 448.01. Oral consent shall~~  
26 ~~be documented in the medical record of the subject of the test. If the test~~  
27 ~~is performed on an anonymous basis the consent shall be oral and no record~~  
28 ~~shall be made containing the subject's name.~~

29 B. ~~In order to obtain specific oral or written informed consent the~~  
30 ~~health care provider licensed pursuant to title 32 shall provide the patient~~  
31 ~~with an explanation of the following:~~

32 ~~1. The test including its purpose, the meaning of its results and the~~  
33 ~~benefits of early diagnosis and medical intervention.~~

34 ~~2. The nature of acquired immune deficiency syndrome and HIV related~~  
35 ~~illness and information about behaviors known to pose risks for transmitting~~  
36 ~~the human immunodeficiency virus.~~

37 ~~3. The confidentiality protections afforded HIV-related information.~~

38 ~~4. That an HIV-related test is voluntary and can be performed~~  
39 ~~anonymously at a public health agency.~~

40 ~~5. That a positive test result must be reported to a public health~~  
41 ~~agency as required by law.~~

42 ~~6. That the consent for the test may be withdrawn at any time before~~  
43 ~~drawing the sample for the test and that the withdrawal of consent may be~~  
44 ~~given orally if the consent was given orally or shall be in writing if the~~  
45 ~~consent was given in writing.~~

1           ~~C. The director shall provide in writing to all health care providers~~  
2 ~~a form that contains the list of informed consent explanations in subsection~~  
3 ~~B of this section. If the health care provider chooses to use oral consent,~~  
4 ~~the provider shall sign and return the form to the director.~~ FOR THE  
5 PURPOSES OF THIS SUBSECTION, "INFORMED CONSENT INFORMATION" MEANS INFORMATION  
6 THAT EXPLAINS HIV INFECTION AND THE MEANING OF A POSITIVE TEST RESULT AND  
7 THAT INDICATES THAT THE PATIENT MAY ASK QUESTIONS AND DECLINE TESTING.

8           ~~D.~~ B. This section does not apply to the performance of an  
9 HIV-related test:

10           1. By a health care provider or health facility in relation to the  
11 procuring, processing, distributing or use of a human body or a human body  
12 part, including organs, tissues, eyes, bones, arteries, blood, semen, milk or  
13 other body fluids, for use in medical research or therapy or for  
14 transplantation to other persons.

15           2. For the purpose of research if the testing is performed in a manner  
16 by which the identity of the test subject is not known and may not be  
17 retrieved by the researcher.

18           3. On a deceased person, if the test is conducted in order to  
19 determine the cause of death or for epidemiologic or public health purposes.

20           4. In the course of providing necessary emergency medical treatment to  
21 a patient who lacks capacity to consent to HIV-related testing and for whom  
22 no person authorized pursuant to law to consent to health care for that  
23 person can be identified on a timely basis if the testing is necessary for  
24 the diagnosis and treatment of the emergency condition. The attending  
25 physician shall document the existence of an emergency medical condition, the  
26 necessity of the HIV-related testing to diagnose and treat the emergency  
27 condition and the patient's lack of capacity.

28           5. On a patient who lacks capacity to consent and for whom no person  
29 authorized pursuant to law to consent to health care for that person can be  
30 identified on a timely basis if the HIV-related testing is directly related  
31 to and necessary for the diagnosis and treatment of the person's medical  
32 condition. HIV-related testing shall be performed under these circumstances  
33 only on written certification by the attending physician and a consulting  
34 physician that the HIV-related testing is directly related to and necessary  
35 for the diagnosis and treatment of the patient's medical condition.

36           6. THAT IS PERFORMED ON AN ANONYMOUS BASIS AT A PUBLIC HEALTH AGENCY.