

/\* OREGON has passed laws concerning real estate disclosures, testing, and the AFS AIDS program. \*/

93.270 Certain discriminatory restrictions in conveyancing instruments prohibited

(1) No person conveying or contracting to convey fee title to real property shall include in an instrument for such purpose a provision:

(a) Restricting the use of the real property by any person or group of persons by reason of color, race, religion, national origin or physical or mental handicap.

(b) Restricting the use of the real property by any home or facility that is licensed by or under the authority of the Department of Human Resources under ORS 443.400 to 443.455 to provide residential care alone or in conjunction with treatment or training or a combination thereof.

(2) Any such provision in an instrument executed in violation of subsection (1) of this section is void and unenforceable.

93.273 Legislative findings regarding disease transmission

The Legislative Assembly finds that there is no known risk of the transmission of human immunodeficiency virus or acquired immune deficiency syndrome by casual contact.

93.275 Incidents not material facts to real property transaction

(1) The following are among incidents that are not material facts to a real property transaction, need not be disclosed in a real property transaction and no cause of action arises against an owner of real property, an agent of the owner or any agent of the transferee of real property for failure to disclose:

(a) The occurrence of an occupant's death by homicide or suicide upon the real property or any details of the death; or

(b) That an occupant or owner of the real property has or died from human immunodeficiency virus or acquired immune deficiency

syndrome.

(2) As used in this section, "transferee" includes a purchaser, lessee or renter of real property.

431.830 Acquired immune deficiency syndrome services and program

The Adult and Family Services Division shall establish an acquired immune deficiency syndrome program for its clientele to provide education and prevention services. The Health Division shall establish an acquired immune deficiency syndrome program to provide education and prevention services to the public. Program authorized by this section may be operated by either division directly or under contract with public and private agencies.

#### HIV TESTING

433.045 Consent to HIV test required

(1) Except as provided in ORS 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 Health Division 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 the laws of this state or any rule,

including any Health Division rule considered necessary for public health or health care purposes, or as authorized by the individual whose blood is tested. An employer shall not be responsible to provide reasonable accommodation under ORS 659.425(1)(a) on the basis of a physical impairment consisting of human immunodeficiency virus infection if the employee does not provide the employer, including the employer's agents responsible for providing the reasonable accommodation, with the HIV test information regarding such employee.

(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 agent, 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.

(7) Whenever an insurer, insurance agent 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.

#### 433.055 Prevalence testing

(1) The Health Division shall conduct studies of the prevalence of the HIV infection in this state. Its findings shall be reported to the Public Health Advisory Board, the Conference of Local Health Officials, the Emergency Board and other interested bodies at regular intervals, commencing in January 1988. The

Health Division may cause the prevalence study of persons sentenced to the Department of Corrections of this state, as defined in ORS 421.005, to be made.

(2) The Health Division shall contract with an appropriate education agency to prepare a curriculum regarding HIV infection, acquired immune deficiency syndrome (AIDS) and prevention of the spread of AIDS for all school districts and offer workshops to prepare teachers and parents to implement the curriculum. The division shall award incentive grants from funds available therefor to school districts to encourage use of the curriculum in the schools.

(3) Prior informed consent to HIV antibody testing need not be obtained from an individual if the test is for the purpose of research as authorized by the Health Division and if the testing is performed in a manner by which the identity of the test subject is not known, and may not be retrieved by the researcher.

#### 433.060 Definitions for 433.060 to 433.080

As used in ORS 433.060 to 433.080 unless the context requires otherwise:

(1) "Division" means the Health Division of the Department of Human Resources.

(2) "Health care facility" means a facility as defined in ORS 442.015 and a mental health facility, alcohol treatment facility or drug treatment facility licensed or operated under ORS chapter 426 or 430.

(3) "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.

(4) "Licensed health care provider" or "health care provider" means a person licensed or certified to provide health care under ORS chapter 677, 678, 679, 680, 684 or 685 or ORS 823.150, or under comparable statutes of any other state.

(5) "Local public health administrator" means the public health administrator of the county or district health department for the jurisdiction in which the reported substantial exposure occurred.

(6) "Local public health officer" means the health officer, as described in ORS 431.418, of the county or district health department for the jurisdiction in which the substantial exposure occurred.

(7) "Occupational exposure" means a substantial exposure of a worker in the course of the worker's occupation.

(8) "Source person" means a person who is the source of the blood or body fluid in the instance of a substantial exposure of another person.

(9) "Substantial exposure" means an exposure to blood or certain body fluids as defined by rule of the Health Division to have a potential for transmitting the human immunodeficiency virus based upon current scientific information.

(10) "Worker" means a person who is licensed or certified to provide health care under ORS chapters 677, 678, 679, 680, 684 or 685 or ORS 823.150, an employee of a health care facility, of a licensed health care provider or of a clinical laboratory, as defined in ORS 438.010(1), a firefighter, a law enforcement officer, as defined in ORS 30.795, a corrections officer or a probation officer.

#### 433.065 Procedures for HIV testing

(1) The Health Division shall by rule prescribe procedures:

(a) Whereby a worker who has experienced an occupational exposure may request or cause to be requested the source person's voluntary informed consent to an HIV test;

(b) Whereby a person who, while being administered health care, has experienced a substantial exposure from a worker shall be notice of such exposure and be given opportunity to be requested the worker s voluntary informed consent to an HIV test; and

(c) Whereby a person who has experienced a substantial exposure shall be offered information about HIV infection, methods of preventing HIV infection and HIV tests.

(2) Rules prescribing procedures under paragraph (a) of subsection (1) of this section may require the participation or intervention of the health care facility and licensed health care provider providing care to the source person and may require the

further participation or intervention of the local public health administrator or local public health officer.

(3) Where the source person under paragraph (a) of subsection (1) of this section is not known to be under the care of a health care facility or provider or cannot be located, and in the case of procedures under subsection (2) of this section, the rules may require the participation and intervention of the local public health administrator.

(4) The rules under this section may also include, but need not be limited to, time frames within which the notice and other procedures are to be performed and by whom, prescribed forms for reporting of exposures, and for recording of results of procedures undertaken and restrictions upon disclosure of such reports and records only to specific persons.

#### 433.070 Compliance with procedures required

(1) Workers, health care facilities, licensed health care providers, local public health administrators and officers and others upon whom duties are imposed by rules adopted under ORS 433.065 shall comply with such requirements.

(2) Any person having information as to the location of a source person shall, when requested for the purpose of carrying out ORS 433.045 and 433.060 to 433.080 and rules hereunder, provide that information.

#### 433.075 Informed consent required; confidentiality

(1) The informed consent provisions of ORS 433.045(1) and (2) apply to any request for consent to an HIV test under rules adopted pursuant to ORS 433.065.

(2) When a source person is deceased, consent for voluntary informed consent under ORS 433.065 shall be from the next of kin.

(3) When an HIV test is performed pursuant to ORS 433.080 or rules adopted under ORS 433.065, the exposed person requesting the test, or the exposed person's employer in the case of an occupational exposure, shall be responsible for the cost of the testing.

(4) Where an employer provides a program of prevention,

education and testing for HIV exposures for its employees, the employee to be tested under the provisions of this Act shall comply with the procedures provided by such program. Such program must be approved by the Health Division of the Department of Human Resources.

(5) When an HIV test is performed pursuant to ORS 433.080 or rules adopted under ORS 433.065, the results shall be reported confidentially to the person who suffered the substantial exposure giving rise to the test.

(6) The confidentiality provisions of ORS 433.045(3) apply to any person who receives an HIV test result pursuant to ORS 433.080 or rules adopted under ORS 433.065. Any person who complies with the requirements of this subsection shall not be subject to an action for damages.

433.080 When test may be required; procedure to require test

When the Health Division declares by rule that mandatory testing of source persons could help a defined class of workers from being infected or infecting others with the human immunodeficiency virus, the following apply:

(1) When a source person, after having been first requested to consent to testing by rules adopted under ORS 433.065, has refused or within a time period prescribed by rule of the division has failed to submit to the requested test, except when the exposed person has knowledge that the exposed person has a history of a positive HIV test, the exposed person may seek mandatory testing of the source person by filing a petition with the circuit court for the county in which the exposure occurred. The form for the petition shall be as prescribed by the division and shall be obtained from the local public health department.

(2) The petition shall name the source person as the respondent and shall include a short and plain statement of facts alleging:

(a) The petitioner is a worker subjected to an occupational exposure or a person who has been subject to a substantial exposure by a worker administering health care and the respondent is the source person;

(b) The petitioner is in the class of workers defined by rule of the Health Division under this section;

(c) All procedures for obtaining the respondent's consent to an HIV test by rules adopted under ORS 433.065 have been exhausted by the petitioner and the respondent has refused to consent to the test, or within the time period prescribed by rule of the division has failed to submit to the test;

(d) The petitioner has no knowledge that the petitioner has a history of a positive HIV test and has since the exposure, within a time period prescribed by rule of the division, submitted a specimen from the petitioner for an HIV test; and

(e) The injury that petitioner is suffering or will suffer if the source person is not ordered to submit to an HIV test.

(3) The petition shall be accompanied by the certificate of the local public health administrator declaring that, based upon information in the possession of the administrator, the facts stated in the allegations under paragraphs (a), (b) and (c) of subsection (2) of this section are true.

(4) Upon the filing of the petition, the court shall issue a citation to the respondent stating the nature of the proceedings, the statutes involved and the relief requested and, that if the respondent does not appear at the time and place for hearing stated in the citation, that the court will order the relief requested in the petition.

(5) The citation shall be served on the respondent together with a copy of the petition by the county sheriff or deputy. The person serving the citation and petition shall, immediately after service thereof, make a return showing the time, place and manner of such service and file it with the clerk of the court.

(6) The hearing shall be held within three days of the service of the citation upon the respondent. The court may for good cause allow an additional period of 48 hours if additional time is requested by the respondent.

(7) Both the petitioner and the local public health administrator certifying to the matter alleged in the petition shall appear at the hearing. The hearing of the case shall be informal with the object of resolving the issue before the court promptly and economically between the parties. The parties shall be entitled to subpoena witnesses, to offer evidence and to cross-examine. The judge may examine witnesses to insure a full inquiry into the facts necessary for a determination of the matter before the court.



(8) After hearing all of the evidence, the court shall determine the truth of the allegations contained in the petition. The court shall order the respondent to submit to the requested test by a licensed health care provider without delay if, based upon clear and convincing evidence, the court finds that:

(a) The allegations in the petition are true;

(b) The injury the petitioner is suffering or will suffer is an injury that only the relief requested will adequately remedy; and

(c) The interest of the petitioner in obtaining the relief clearly outweighs the privacy interest of the respondent in withholding consent.

(9) If the court does not make the finding described in subsection

(8) of this section, the court shall dismiss the petition.

(10) Failure to obey the order of the court shall be subject to contempt proceedings pursuant to law.