

PUBLIC HEALTH CODE (EXCERPT)

Act 368 of 1978

333.9123 Testing of donor, sample, specimen, or organ for presence of HIV or antibody to HIV; applicability of subsection (1); effect of positive test results; inability to perform test; written consent to use blood, tissue, organ, or other human specimen; donation of blood exclusively for own use; use of self-replicating body fluids; informing donor of positive test result; violation; liability; definitions.

Sec. 9123. (1) Except as otherwise provided in subsection (2), a person, including, but not limited to, a licensee under article 15 or article 17 that procures or collects blood or human tissues, organs, or other specimens for purposes of transplantation, transfusion, introduction, or injection into a human body shall test or provide for the testing of each potential donor or each sample or specimen of blood or tissue, or each organ or other human specimen for the presence in the donor, sample, specimen, or organ of HIV or an antibody to HIV.

(2) Subsection (1) does not apply if a test for HIV or an antibody to HIV cannot be performed in the time during which the blood, tissue, organ, or other human specimen is viable for purposes of transplantation, transfusion, introduction, or injection into a human body, due to emergency or other exigent circumstances.

(3) Except as otherwise provided in subsection (4) or (5), if the results of a test performed under subsection (1) are positive, the blood, tissue, organ, or other human specimen must not be used for purposes of transplantation, transfusion, introduction, or injection into a human body. If a test for HIV or an antibody to HIV cannot be performed in the time during which the blood, tissue, organ, or other human specimen is viable for purposes of transplantation, transfusion, introduction, or injection into a human body, due to emergency or other exigent circumstances, then the blood, tissue, organ, or other human specimen may be used for purposes of transplantation, transfusion, introduction, or injection into a human body if the person responsible for the transplantation, transfusion, introduction, or injection and the individual who intends to receive the blood, tissue, organ, or other human specimen are informed that there was insufficient time to perform a test for HIV or an antibody to HIV, and agree in writing to the use of the blood, tissue, organ, or other human specimen. If the individual who intends to receive the blood, tissue, organ, or other human specimen under this subsection is a minor, then the parent, legal guardian, or person in loco parentis of the minor must be informed that there was insufficient time to perform a test for HIV or an antibody to HIV and must agree in writing to the use of the blood, tissue, organ, or other human specimen. If the individual who intends to receive the blood, tissue, organ, or other human specimen is otherwise unable to give informed consent, then any of the following persons, in order of priority stated, when persons in prior classes are not available at the time the transplantation, transfusion, introduction, or injection is to be performed, must be informed that there was insufficient time to perform a test for HIV or an antibody to HIV and must agree in writing to the use of the blood, tissue, organ, or other human specimen:

(a) The spouse.

(b) An adult son or daughter.

(c) Either parent.

(d) An adult brother or sister.

(e) A guardian of the individual at the time the transplantation, transfusion, introduction, or injection is to be performed.

(4) If an individual donates blood exclusively for the individual's own transfusion needs, and if the results of a test performed under subsection (1) are positive, the individual may use the blood for that purpose if both the person responsible for the transfusion and the individual who intends to receive the blood are informed of the positive test result and consent in writing to the use of the blood.

(5) If the results of a test performed on an organ under subsection (1) are positive, the organ may be used for purposes of transplantation into a human body if the individual who intends to receive the organ has tested positive for HIV, the individual is informed that the test results performed on the organ under subsection (1) are positive, and the individual and the person responsible for the transplantation agree in writing to the use of the organ. If the individual who intends to receive the organ under this subsection is a minor, then the parent, legal guardian, or person in loco parentis of the minor must be informed that the test results performed on the organ under subsection (1) are positive and must agree in writing to the use of the organ.

(6) A person, including, but not limited to, a licensee under article 15 or article 17, who procures or collects self-replicating body fluids for purposes of introduction into a human body shall test each potential donor for the presence in the donor of HIV or an antibody to HIV. If the test results are positive, the self-replicating body fluids of the donor must not be used for introduction into a human body.

(7) A person, including, but not limited to, a licensee under article 15 or article 17 that orders or performs,

or both, a test for HIV or an antibody to HIV under this section shall, if the test result is positive, inform the donor of the positive test result. For purposes of this subsection, a positive test result is a double positive enzyme-linked immunosorbent assay test, combined with a positive western blot assay test, or a positive result under an HIV test that is considered reliable by the federal Centers for Disease Control and Prevention and is approved by the department.

(8) A person that violates this section is liable in a civil action for damages for the loss or damage resulting from the violation.

(9) As used in this section:

(a) "Blood" includes whole blood, blood plasma, blood products, and blood derivatives.

(b) "HIV" means human immunodeficiency virus.

(c) "Self-replicating body fluids" means bodily fluids that are reproduced by the body, including, but not limited to, breast milk. Self-replicating body fluids does not include blood or sperm.

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