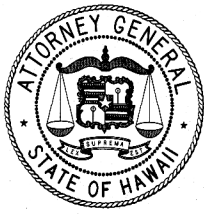


SB2391

Measure Title:	RELATING TO HEALTH.
Report Title:	Communicable Disease; Required Testing; Disclosure
Description:	Authorizes public sector employees and volunteers who may have been exposed to a communicable disease through contact with bodily fluids in the course of their duties to petition a court for an order requiring testing of the person or decedent who is the source of the possible exposure. Limits disclosure of test results.
Companion:	HB1953
Package:	None
Current Referral:	CPH/JDL, WAM
Introducer(s):	BAKER, KIDANI, Gabbard, Taniguchi



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2016**

ON THE FOLLOWING MEASURE:
S.B. NO. 2391, RELATING TO HEALTH.

BEFORE THE:

SENATE COMMITTEES ON COMMERCE, CONSUMER PROTECTION, AND HEALTH
AND ON JUDICIARY AND LABOR

DATE: Friday, February 12, 2016 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Blair Goto, Deputy Attorney General

Chairs Baker and Keith-Agaran and Members of the Committees:

The Department of the Attorney General provides comments on this measure.

The purpose of the bill is to add a new section¹ to chapter 325, Hawaii Revised Statutes, that would: (1) authorize any employee or volunteer of a public agency and any emergency medical services personnel who may have been exposed to a communicable disease via human blood or bodily fluids (exposed person), or the employer or volunteer agency of such an exposed person, to seek a court order that would require medical testing of the person or decedent who was the source of the potential exposure (source person); (2) require, when possible, the exposed person to submit information to the Department of Health (DOH) to document the possible exposure and "for verification that there was substantial exposure"; (3) authorize a court to order the source person to submit two specimens or two specimens to be taken from a deceased source person for testing; (4) authorize the DOH to generate a duplicate order of the court's order; and (5) require the exposed person's employer or the agency for which the exposed person volunteers or the employer's or agency's insurer to pay the cost of any court-ordered test.

The bill may create implementation and enforcement problems. The bill does not contain provisions for the exposed person, exposed person's employer, or exposed person's agency (petitioner) to locate the source person should that be necessary. Nor does it specify how an

¹We note that the prefatory language in section 1 of the bill refers to two new sections being added to chapter 325, Hawaii's Revised Statutes. As the bill adds only one new section, the prefatory wording "two new sections" should be changed to "one new section".

order is to be served upon the source person. In addition, the bill does not provide an enforcement mechanism should the source person fail to comply with the order.

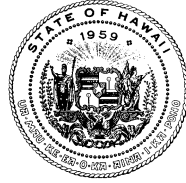
Subsection (b) of the new statutory section (on page 2, lines 1-8) establishes a procedure, when possible, for DOH verification that there was a substantial exposure based upon a written submission from the petitioner. Subsection (b) does not state how the verification is to be used. Nor does subsection (b) state what is to happen if DOH does not verify that there was a substantial exposure or if it is not possible for the petitioner to submit information concerning the possible exposure.

Subsection (d) of the new section (on pages 3-4, lines 11-20 and 1-2) authorizes DOH to sign the name of the judge on a duplicate order if the judge enters an order to submit specimens or for specimens to be taken. It is not clear why the DOH should be granted this power. For example, if the exposed person is not a DOH employee, the DOH would have minimal interest in the outcome of the hearing. Although the measure states that a duplicate order shall be deemed to be an order of the court, the subsection does not otherwise specify the purpose of a duplicate order.

The new section also does not specify which court is to hold a prompt hearing on a petition for an order to submit specimens. Nor does the section provide for notice to the source person or explicitly state that such a hearing is to be ex parte.

Last, we recommend a wording change on page 3, lines 9-10. Disclosure of the results of the test "to the petitioner and in accordance with section 325-101" is ambiguous. It is not clear that a disclosure to the petitioner would also be in accordance with section 325-101. To clarify the ambiguity, lines 9-10 could be amended to read: "disclose the results of the test to the petitioner and as otherwise provided in section 325-101."

We respectfully recommend that the Committees pass this bill only if these issues are resolved.



STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. Box 3378
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WRITTEN
TESTIMONY
ONLY

**Testimony COMMENTING on SB 2391
(RELATING TO HEALTH)**

SENATOR ROSALYN H. BAKER, CHAIR
SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION AND HEALTH

SENATOR GILBERT S. C. KEITH-AGARAN, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR

Hearing Date: February 12, 2016

Room Number: 229

1 **Fiscal Implications:** None

2 **Department Testimony:** The Department of Health is providing comments on SB 2391. This
3 measure permits a broad range of public employees who may have been exposed to a bloodborne
4 pathogen (BBP) to petition the court to order the possible source individual to provide
5 specimens for testing to identify if he or she has a communicable bloodborne infection. When
6 possible, this petition is to be supported by a determination by the Department of Health (DOH)
7 that a substantial exposure took place. This determination is to be based on criteria developed by
8 DOH. The court order requires the specimens to be tested by a hospital or laboratory and the
9 results to be released to the petitioner.

10 The process outlined in this bill does not provide any significant medical advantage in the
11 evaluation and management of occupational exposures to bloodborne pathogens. The principal
12 communicable diseases transmitted through blood or bodily fluids are Human Immunodeficiency
13 Virus (HIV), Hepatitis B virus (HBV), and Hepatitis C Virus (HCV). There is no post-exposure
14 prophylaxis (PEP) medication for HBV or HCV. PEP medication is only available for HIV
15 exposure, which should be initiated as quickly as possible after the exposure and no longer
16 than 72 hours afterwards. Ideally, the source individual would be asked about their HIV status,
17 requested to undergo testing, and share the test results immediately and confidentially if they are

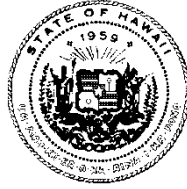
1 willing. Court ordered HIV testing would stigmatize the person being tested and the results of a
2 court-mandated test would not be available quickly enough to influence a clinical decision
3 whether to initiate HIV PEP.

4 Occupational Safety and Health Administration (OSHA) Law (29 CFR 1910.1030) mandates
5 that employers develop and adhere to a BBP Exposure Plan based on OSHA-established
6 standards to prevent BBP exposures and to manage accidental exposures. The majority of BBP
7 exposures are due to nonadherence with OSHA-mandated standards.

8 This bill does not address any of the due process concerns that arise when taking tissue or fluid
9 samples from an individual who may or may not have consented to the sampling. Current law
10 only allows mandatory sampling from an individual upon conviction.

11 There is no apparent public health reason to support this measure.

12 Thank you for the opportunity to testify.



STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES

P. O. Box 339
Honolulu, Hawaii 96809-0339

February 12, 2016

TO: The Honorable Rosalyn H. Baker, Chair
Senate Committee on Commerce, Consumer Protection, and Health

The Honorable Gilbert S.C. Keith-Agaran, Chair
Senate Committee on Judiciary and Labor

FROM: Rachael Wong, DrPH, Director

SUBJECT: **SB 2391- RELATING TO HEALTH**

Hearing: Friday, February 12, 2016; 9:00 a.m.
Conference Room 016, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the opportunity to testify on this bill and provides comments.

PURPOSE: The purpose of this bill is to authorize public sector employees and volunteers who may have been exposed to a communicable disease through contact with bodily fluids in the course of their duties to petition a court for an order requiring testing of the person or decedent who is the source of the possible exposure. Limits disclosure of test results.

The DHS understands the intent of the measure and the importance of protecting our workers. The Department is concerned about the effect this measure would have on our operations if rules are not prescribed regarding the criterion upon which petitions to the court would be made. In addition, the Medicaid or public assistance application does not require an individual to include a diagnosis, it would be difficult to determine exposure to a communicable disease through exposure to blood or other bodily fluid referenced in the bill.

The DHS defers to the Department of Health regarding clinical efficacy of testing and determination of any public health risk that may exist. The Department defers to the

Department of the Attorney General and the Judiciary regarding the constitutionality of such a provision as well as how said employees would gain access to a judicial determination.

Thank you for the opportunity to testify on this measure.