

HEALTH AND SAFETY CODE CHAPTER 162. BLOOD BANKS AND DONATION OF BLOOD

HEALTH AND SAFETY CODE

TITLE 2. HEALTH

SUBTITLE H. PUBLIC HEALTH PROVISIONS

CHAPTER 162. BLOOD BANKS AND DONATION OF BLOOD

Sec. 162.001. DEFINITIONS. In this chapter:

(1) "Blood bank" means a facility that obtains blood from voluntary donors, as that term is defined by the United States Food and Drug Administration, the American Association of Blood Banks, and the American Red Cross Blood Services and that is registered or licensed by the Office of Biologics of the United States Food and Drug Administration and accredited by the American Association of Blood Banks or the American Red Cross Blood Services, or is qualified for membership in the American Association of Tissue Banks. The term includes a blood center, regional collection center, tissue bank, and transfusion service.

(2) "AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control of the United States Public Health Service.

(3) "HIV" means human immunodeficiency virus.
Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.08(a), eff. Sept. 1, 1989.

Sec. 162.002. REQUIRED TESTING OF BLOOD. (a) For each donation of blood, a blood bank shall require the donor to submit to tests for infectious diseases, including tests for AIDS, HIV, or hepatitis, and serological tests for contagious venereal diseases.

(b) A blood bank is not required to obtain the donor's informed consent before administering tests for infectious diseases and is not required to provide counseling concerning the test results.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 162.003. CONFIDENTIALITY OF BLOOD BANK RECORDS. The medical and donor records of a blood bank are confidential and may

not be disclosed except as provided by this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 162.004. DISCLOSURE REQUIRED BY LAW. A blood bank shall disclose all information required by law, including HIV test results, to:

(1) the department and a local health authority as required under Chapter 81 (Communicable Disease Prevention and Control Act);

(2) the Centers for Disease Control of the United States Public Health Service, as required by federal law or regulation; or

(3) any other local, state, or federal entity, as required by law, rule, or regulation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 162.005. DISCLOSURE TO CERTAIN PHYSICIANS OR PERSON TESTED. A blood bank shall disclose blood test results and the name of the person tested to:

(1) the physician or other person authorized by law who ordered the test;

(2) the physician attending the person tested; or

(3) the person tested or a person legally authorized to consent to the test on behalf of the person tested.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 162.006. DISCLOSURE TO OTHER BLOOD BANKS. (a) A blood bank may report to other blood banks the name of a donor with a possible infectious disease according to positive blood test results.

(b) A blood bank that reports a donor's name to other blood banks under this section may not disclose the infectious disease that the donor has or is suspected of having.

(c) A blood bank that reports as provided by this section does not breach a confidence arising out of any confidential relationship.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 162.007. REPORT TO RECIPIENT OR TRANSFUSER. (a) A blood bank shall report blood test results for blood confirmed as HIV positive by the normal procedures blood banks presently use or found to be contaminated by any other infectious disease to:

(1) the hospital or other facility in which the blood was transfused or provided;

(2) the physician who transfused the infected blood;
or

(3) the recipient of the blood.

(b) A blood bank may report blood test results for statistical purposes.

(c) A blood bank that reports test results under this section may not disclose the name of the donor or person tested or any other information that could result in the disclosure of the donor's or person's identity, including an address, social security number, designated recipient, or replacement donation information. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 162.008. PROCEDURES FOR NOTIFYING BLOOD RECIPIENTS. Each hospital, physician, health agency, and other transfuser of blood shall strictly follow the official "Operation Look-Back" procedure of the American Association of Blood Banks or the American Red Cross Blood Services in notifying past and future recipients of blood. The only exception to notifying a recipient of blood is if the recipient is dead or cannot be located.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 5.08(b), eff. Sept. 1, 1989.

Sec. 162.009. PROVISION OF BLOOD SAMPLES FOR TESTING. On request, a blood bank shall provide blood samples to hospitals, laboratories, and other blood banks for additional, repetitive, or different testing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 162.010. GENERAL POWERS AND DUTIES OF COURT.

(a) After notice and hearing, a court of competent jurisdiction

may require a blood bank to provide a recipient of blood from the blood bank with the results of tests of the blood of each donor of blood transfused into the recipient. The court may also require the test results to be given to an heir, parent, or guardian of the recipient, or a personal representative of the recipient's estate. The test results must be given in accordance with Section 162.007.

(b) If a blood bank fails to or cannot provide the test results as required under Subsection (a), the court may require the blood bank to use every reasonable effort, including any effort directed by the court, to locate any donor of the blood in question. The court may require the blood bank to obtain from that donor a blood sample for testing and may direct the blood bank to provide blood test results, samples of the blood, or both, to an independent laboratory designated by the court for testing. The results of the independent laboratory test must be made available to the recipient, an heir, parent, or guardian of the recipient, or the personal representative of the recipient's estate.

(c) Section 162.002 applies if a blood bank requires a donor to provide a blood sample for testing under Subsection (b).

(d) If a blood test result is positive or if the blood bank fails to or cannot provide a blood test result or blood sample as required under Subsection (b), the court may require the blood bank to provide any information that the court determines is necessary to satisfy the court that the blood bank has complied in all respects with this section and the court's order or has demonstrated every reasonable effort to comply. The blood bank must provide the information to the judge of the court in camera and under seal.

(e) The court may not disclose to any other person the name of a donor or any other information that could result in the disclosure of a donor's identity, including an address, social security number, designated recipient, or replacement donation information. However, on the motion of any party, the court shall order the taking of the donor's deposition at a specified time and in a manner that maintains the donor's anonymity.

(f) The court may not deny a party's attorney the right to orally cross-examine the donor.

Sec. 162.011. DISCOVERY POWERS OF COURT. (a) A court of competent jurisdiction shall exercise the discovery powers granted in this section on the motion of any party. The court shall exercise the powers to the extent reasonably necessary to obtain information from or relating to a donor if that information:

(1) is reasonably calculated to lead to the discovery of admissible evidence regarding any matter relevant to the subject matter of a pending proceeding; and

(2) cannot otherwise be obtained without threatening the disclosure of the name of a donor or other information that could result in the disclosure of a donor's identity, including an address, social security number, designated recipient, or replacement donation information.

(b) This section does not apply to information obtainable under Section 162.010.

(c) The court may:

(1) order the deposition of any witness, including a donor, orally, on written questions and cross-questions propounded by the parties, or both; and

(2) compel the production of documents and things.

(d) A subpoena issued to a donor under this section may be served only in person at the donor's residence address. On a showing that service in person cannot be made at the donor's residence despite diligent efforts to do so, the court may order service on the donor at other places as directed by the court.

(e) The court shall deliver to the parties all discoverable information obtained through the exercise of powers provided by this section, including testimony, documents, or things. The court shall first delete from that information the name of any donor or any other information that could result in the disclosure of a donor's identity, including information described by Subsection (a)(2). The court may substitute fictitious names, such as "John Doe," or make other changes as necessary to protect the confidentiality of the donor's identity in the information made available to the parties.

(f) The court may not disclose confidential donor information to any person other than a person acting under Section 162.010(e) or (f). That person may not disclose the information to others.

(g) The exercise of the court's powers under this section is governed by the Texas Rules of Civil Procedure, except to the extent of any conflict with this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 162.012. LIMITATION ON LIABILITY. (a) A donor who provides information or blood samples under Section 162.010 is immune from all liability arising out of the donation of the blood transfused into a recipient.

(b) A blood bank is not liable for the disclosure of information to a court in accordance with an order issued under Sections 162.010(b)-(f).

(c) A presumption of negligence or causation does not attach to a donor's positive test result if the test result is obtained after the donation of blood or blood components that is the subject of discovery as provided under Section 162.011.

(d) Except as provided by Section 162.013 or 162.014, a person who negligently or intentionally discloses blood bank records in violation of this chapter is liable only for actual damages resulting from the negligent or intentional disclosure.

(e) This chapter does not give rise to any liability under Subchapter E, Chapter 17, Business & Commerce Code (Deceptive Trade Practices-Consumer Protection Act).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 162.013. CIVIL PENALTY. (a) A person who is injured by a violation of Section 162.006, 162.007, 162.010, or 162.011 may bring a civil action for damages. In addition, any person may bring an action to restrain such a violation or threatened violation.

(b) If it is found in a civil action that a person has violated a section listed in Subsection (a), that person is liable for:

- (1) actual damages;

(2) a civil penalty of not more than \$1,000; and

(3) court costs and reasonable attorney's fees incurred by the person bringing the action.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 162.014. CRIMINAL PENALTY. (a) A person commits an offense if the person discloses information in violation of Section 162.006, 162.007, 162.010, or 162.011.

(b) An offense under this section is a Class C misdemeanor.

(c) Each disclosure made in violation of Section 162.006 or 162.007 constitutes a separate offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 162.015. DONATION OF BLOOD BY PERSONS YOUNGER THAN 18 YEARS OF AGE. A person who is 17 years of age may consent to the donation of the person's blood or blood components. A person younger than 18 years of age may not receive any compensation from a blood bank for a donation of the person's blood or blood components. Added by Acts 1993, 73rd Leg., ch. 160, Sec. 1, eff. Sept. 1, 1993.

Sec. 162.016. BE A BLOOD DONOR ACCOUNT. (a) The be a blood donor account is a separate account in the general revenue fund. The account is composed of:

(1) money deposited to the credit of the account under Section 504.641, Transportation Code; and

(2) gifts, grants, donations, and legislative appropriations.

(b) The department administers the account and may spend money credited to the account only to:

(1) make grants to nonprofit blood centers in this state for programs to recruit and retain volunteer blood donors; and

(2) defray the cost of administering the account.

(c) The board:

(1) may accept gifts, grants, and donations from any source for the benefit of the account; and

(2) by rule shall establish guidelines for spending

money credited to the account.

Added by Acts 2003, 78th Leg., ch. 1320, Sec. 9, eff. Sept. 1, 2003.

Sec. 162.017. BE A BLOOD DONOR ADVISORY COMMITTEE.

(a) The commissioner shall appoint a five-member be a blood donor advisory committee composed of:

(1) one volunteer blood donor who has given at least one gallon of blood in the two years preceding the appointment;

(2) two representatives from nonprofit blood centers;

(3) one person who has received a blood transfusion in the five years preceding the appointment; and

(4) one representative from the department.

(b) The commissioner shall designate one member as presiding officer of the committee.

(c) The committee shall:

(1) meet at least annually or as called by the commissioner;

(2) assist the board in establishing guidelines for the expenditure of money credited to the be a blood donor account; and

(3) review and make recommendations to the department on applications submitted to the department for grants funded with money credited to the be a blood donor account.

(d) Members of the committee serve without compensation and are not entitled to reimbursement for expenses. Members of the committee serve staggered four-year terms, with the terms of as near one-half as possible of the members expiring on January 31 of each even-numbered year.

Added by Acts 2003, 78th Leg., ch. 1320, Sec. 9, eff. Sept. 1, 2003.

Sec. 162.018. BROCHURE ON UMBILICAL CORD BLOOD OPTIONS.

(a) The executive commissioner of the Health and Human Services Commission shall prepare and update as necessary a brochure based on nationally accepted, peer reviewed, scientific research information regarding stem cells contained in the umbilical cord blood after delivery of an infant. The information in the brochure must include:

(1) the current and potential uses, risks, and benefits of stem cells contained in umbilical cord blood to a potential recipient of donated stem cells, including a biological family member, extended family member, or nonrelated individual;

(2) the options available for future use or storage of umbilical cord blood after delivery of an infant, including:

(A) discarding the stem cells;

(B) donating the stem cells to a public umbilical cord blood bank;

(C) storing the stem cells in a private family umbilical cord blood bank for use by immediate and extended family members; and

(D) storing the stem cells for immediate and extended family use through a family or sibling donor banking program that provides free collection, processing, and storage when a medical need exists;

(3) the medical process used to collect umbilical cord blood after delivery of an infant;

(4) any risk associated with umbilical cord blood collection to the mother and the infant;

(5) any costs that may be incurred by a pregnant woman who chooses to donate or store umbilical cord blood after delivery of the woman's infant; and

(6) the average cost of public and private umbilical cord blood banking.

(b) The Department of State Health Services shall make the brochure available on the department's website and shall distribute the brochure on request to physicians or other persons permitted by law to attend a pregnant woman during gestation or at delivery of an infant.

Added by Acts 2007, 80th Leg., R.S., Ch. 104, Sec. 1, eff. May 17, 2007.

Sec. 162.019. DUTY OF CERTAIN PROFESSIONALS. (a) Except as otherwise provided by this section, a physician or other person permitted by law to attend a pregnant woman during gestation or at delivery of an infant shall provide the woman with the brochure

described in Section 162.018 before the third trimester of the woman's pregnancy or as soon as reasonably feasible.

(b) A person described in Subsection (a) who attends a pregnant woman during delivery of her infant shall permit the mother to arrange for umbilical cord blood storage or donation if the mother requests unless, in the opinion of the person, the donation threatens the health of the mother or her infant.

(c) A person described by Subsection (a) is not required to distribute the brochure under Subsection (a) or to permit for the arrangement of umbilical cord blood storage or donation under Subsection (b) if the action conflicts with the person's religious beliefs and the person makes this fact known to the mother as soon as reasonably feasible.

(d) A person described by Subsection (a) is not required to distribute the brochure under Subsection (a) while treating the pregnant woman for an emergency condition or when the mother presents in labor and delivers the infant during that presentation.

(e) A person described by Subsection (a) is not required to distribute the brochure under Subsection (a) if the woman provides the person with a written statement that she chooses to view the materials on the website described by Section 162.018(b).

(f) A person described by Subsection (a) who fails to distribute the brochure is not subject to discipline by the appropriate licensing agency and a cause of action is not created by any failure to distribute the brochure as required by this section. Added by Acts 2007, 80th Leg., R.S., Ch. 104, Sec. 1, eff. May 17, 2007.