

ASSEMBLY BILL

No. 441

Introduced by Assembly Members Richter and Mazzone

February 24, 1997

An act to amend Section 1644.5 of the Business and Professions Code, relating to health.

LEGISLATIVE COUNSEL'S DIGEST

AB 441, as introduced, Richter. Tissue donors: sperm donors.

Existing law prohibits the transfer of any tissues, as defined, into the body of another person unless the donor of the tissues has been screened and found nonreactive for evidence of infection with certain communicable diseases. Violation of those provisions is a crime.

This bill would create an exception to that prohibition by authorizing a recipient of sperm to consent to therapeutic insemination of sperm or other reproductive use of sperm even if the sperm is found reactive, if the sperm donor is the spouse or partner of the recipient and the recipient signs a release.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1644.5 of the Health and Safety
- 2 Code is amended to read:

1 1644.5. (a) No tissues shall be transferred into the
2 body of another person by means of transplantation,
3 unless the donor of the tissues has been screened and
4 found nonreactive by laboratory tests for evidence of
5 infection with HIV, agents of viral hepatitis (HBV and
6 HCV), human T lymphotropic virus-1 (HTLV-1), and
7 syphilis. The state department may adopt regulations
8 requiring additional screening tests of donors or tissues
9 when, in the opinion of the state department, the action
10 is necessary for the protection of the public, donors, or
11 recipients.

12 (b) Notwithstanding subdivision (a), infectious
13 disease screening of blood and blood products shall be
14 carried out solely in accordance with Article 2
15 (commencing with Section 1601) of Chapter 4.

16 (c) All donors of sperm shall be screened and found
17 nonreactive as required under subdivision (a), except
18 ~~that a~~ *in the following instances:*

19 (1) A recipient of sperm, from a sperm donor known
20 to the recipient, may waive a second or other repeat
21 testing of that donor if the recipient is informed of the
22 requirements for testing donors under this section and
23 signs a written waiver.

24 (2) *A recipient of sperm may consent to therapeutic*
25 *insemination of sperm or use of sperm in other advanced*
26 *reproductive technologies even if the sperm donor is*
27 *found reactive for any of the agents described in*
28 *subdivision (a) or (e) if the sperm donor is the spouse or*
29 *partner of that recipient and the recipient signs an*
30 *exceptional release statement.*

31 (d) Subdivision (a) shall not apply to the
32 transplantation of tissue from a donor who has not been
33 tested or, with the exception of HIV, has been found
34 reactive for the infectious diseases listed in subdivision
35 (a) or for which the state department has, by regulation,
36 required additional screening tests, if both of the
37 following conditions are satisfied:

38 (1) The physician and surgeon performing the
39 transplantation has determined any one or more of the
40 following:



1 (A) Without the transplantation the intended
2 recipient will most likely die during the period of time
3 necessary to obtain other tissue or to conduct the
4 required tests.

5 (B) The intended recipient already is diagnosed with
6 the infectious disease for which the donor has tested
7 positive.

8 (C) The symptoms from the infectious disease for
9 which the donor has tested positive will most likely not
10 appear during the intended recipient's likely lifespan
11 after transplantation with the tissue or may be treated
12 prophylactically if they do appear.

13 (2) Consent for the use of the tissue has been obtained
14 from the recipient, if possible, or if not possible, from a
15 member of the recipient's family, or the recipient's legal
16 guardian. For purposes of this section, "family" shall
17 mean spouse, adult son or daughter, either parent, adult
18 brother or sister, or grandparent.

19 (e) Tissues from donors who test reactive for agents of
20 viral hepatitis, (HBV and HCV), human T lymphotropic
21 virus-1 (HTLV-1), or syphilis shall not be used in
22 California for transplantation by means of therapeutic
23 insemination or ingestion.

