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## SENATE BILL NO. 227

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions  
on February 19, 2008)

(Patron Prior to Substitute—Senator McDougle)

*A BILL to amend and reenact § 32.1-45.1 of the Code of Virginia, relating to consent for the testing of minors for HIV and hepatitis.*

**Be it enacted by the General Assembly of Virginia:**

**1. That § 32.1-45.1 of the Code of Virginia is amended and reenacted as follows:**

§ 32.1-45.1. Deemed consent to testing and release of test results related to infection with human immunodeficiency virus or hepatitis B or C viruses.

A. Whenever any health care provider, or any person employed by or under the direction and control of a health care provider, is directly exposed to body fluids of a patient in a manner which may, according to the then current guidelines of the Centers for Disease Control, transmit human immunodeficiency virus or hepatitis B or C viruses, the patient whose body fluids were involved in the exposure shall be deemed to have consented to testing for infection with human immunodeficiency virus or hepatitis B or C viruses. Such patient shall also be deemed to have consented to the release of such test results to the person who was exposed. In other than emergency situations, it shall be the responsibility of the health care provider to inform patients of this provision prior to providing them with health care services which create a risk of such exposure.

B. Whenever any patient is directly exposed to body fluids of a health care provider, or of any person employed by or under the direction and control of a health care provider, in a manner which may, according to the then current guidelines of the Centers for Disease Control, transmit human immunodeficiency virus or hepatitis B or C viruses, the person whose body fluids were involved in the exposure shall be deemed to have consented to testing for infection with human immunodeficiency virus or hepatitis B or C viruses. Such person shall also be deemed to have consented to the release of such test results to the patient who was exposed.

C. For the purposes of this section, "health care provider" means any person, facility or agency licensed or certified to provide care or treatment by the Department of Health, Department of Mental Health, Mental Retardation and Substance Abuse Services, Department of Rehabilitative Services, or the Department of Social Services, any person licensed or certified by a health regulatory board within the Department of Health Professions except for the Boards of Funeral Directors and Embalmers and Veterinary Medicine or any personal care agency contracting with the Department of Medical Assistance Services.

D. "Health care provider," as defined in subsection C of this section, shall be deemed to include any person who renders emergency care or assistance, without compensation and in good faith, at the scene of an accident, fire, or any life-threatening emergency, or while en route therefrom to any hospital, medical clinic or doctor's office during the period while rendering such emergency care or assistance. The Department of Health shall provide appropriate counseling and opportunity for face-to-face disclosure of any test results to any such person.

E. Whenever any law-enforcement officer is directly exposed to body fluids of a person in a manner which may, according to the then current guidelines of the Centers for Disease Control, transmit human immunodeficiency virus or hepatitis B or C viruses, the person whose body fluids were involved in the exposure shall be deemed to have consented to testing for infection with human immunodeficiency virus or hepatitis B or C viruses. Such person shall also be deemed to have consented to the release of such test results to the law-enforcement officer who was exposed. In other than emergency situations, it shall be the responsibility of the law-enforcement officer to inform the person of this provision prior to the contact which creates a risk of such exposure.

F. Whenever a person is directly exposed to the body fluids of a law-enforcement officer in a manner which may, according to the then current guidelines of the Centers for Disease Control, transmit human immunodeficiency virus or hepatitis B or C viruses, the law-enforcement officer whose body fluids were involved in the exposure shall be deemed to have consented to testing for infection with human immunodeficiency virus or hepatitis B or C viruses. The law-enforcement officer shall also be deemed to have consented to the release of such test results to the person.

G. For the purposes of this section, "law-enforcement officer" means a person who is both (i) engaged in his public duty at the time of such exposure and (ii) employed by any sheriff's office, any adult or youth correctional facility, or any state or local law-enforcement agency, or any agency or department under the direction and control of the Commonwealth or any local governing body that employs persons who have law-enforcement authority.

HOUSE SUBSTITUTE

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60 H. Whenever any school board employee is directly exposed to body fluids of any person in a  
61 manner which may, according to the then current guidelines of the Centers for Disease Control, transmit  
62 human immunodeficiency virus or hepatitis B or C viruses, the person whose body fluids were involved  
63 in the exposure shall be deemed to have consented to testing for infection with human  
64 immunodeficiency virus or hepatitis B or C viruses. Such person shall also be deemed to have consented  
65 to the release of such test results to the school board employee who was exposed. In other than  
66 emergency situations, it shall be the responsibility of the school board employee to inform the person of  
67 this provision prior to the contact that creates a risk of such exposure.

68 I. Whenever any person is directly exposed to the body fluids of a school board employee in a  
69 manner that may, according to the then current guidelines of the Centers for Disease Control, transmit  
70 human immunodeficiency virus or hepatitis B or C viruses, the school board employee whose body  
71 fluids were involved in the exposure shall be deemed to have consented to testing for infection with  
72 human immunodeficiency virus or hepatitis B or C viruses. The school board employee shall also be  
73 deemed to have consented to the release of such test results to the person.

74 J. For the purposes of this section, "school board employee" means a person who is both (i) acting in  
75 the course of employment at the time of such exposure and (ii) employed by any local school board in  
76 the Commonwealth.

77 K. For purposes of ~~subsection H~~ *this section*, if the person ~~to be tested~~ *whose blood specimen is*  
78 *sought for testing* is a minor *and that minor refuses to provide such specimen*, consent for obtaining  
79 ~~such testing~~ *specimen* shall be obtained from the parent, guardian, or person standing in loco parentis of  
80 such minor prior to initiating such testing. If the parent or guardian or person standing in loco parentis  
81 withholds such consent *or is not reasonably available*, ~~the school board~~ *person potentially exposed to*  
82 *the human immunodeficiency virus or hepatitis B or C viruses, or the employer of such person*, may  
83 petition the juvenile and domestic relations district court in the county or city where the minor resides  
84 *or resided for an order requiring such testing, or, in the case of a nonresident, the county or city where*  
85 *the health care provider, law-enforcement agency or school board has its principal office or, in the case*  
86 *of a health care provider rendering emergency care pursuant to subsection D, the county or city where*  
87 *the exposure occurred, for an order requiring the minor to provide a blood specimen or to submit to*  
88 *testing and to disclose the test results in accordance with this section.*

89 L. Except as provided in subsection K, if the person whose blood specimen is sought for testing  
90 refuses to provide such specimen, any person potentially exposed to the human immunodeficiency virus  
91 or hepatitis B or C viruses, or the employer of such person, may petition the general district court of the  
92 county or city in which the person whose specimen is sought resides or resided, or, in the case of a  
93 nonresident, the county or city where the health care provider, law-enforcement agency or school board  
94 has its principal office *or, in the case of a health care provider rendering emergency care pursuant to*  
95 *subsection D, the county or city where the exposure occurred*, for an order requiring the person to  
96 provide a blood specimen or to submit to testing and to disclose the test results in accordance with this  
97 section. At any hearing before the court, the person whose specimen is sought or his counsel may  
98 appear. The court shall be advised by the Commissioner or his designee prior to entering any testing  
99 order. If a testing order is issued, both the petitioner and the person from whom the blood specimen is  
100 sought shall receive counseling and opportunity for face-to-face disclosure of any test results by a  
101 licensed practitioner or trained counselor.