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HOUSE BILL NO. 2449

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions on February 3, 2009)

(Patron Prior to Substitute—Delegate Sickles)

A BILL to amend and reenact §§ 32.1-45.1 and 32.1-116.3 of the Code of Virginia, relating to deemed consent for HIV and hepatitis B and C testing.

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-45.1 and 32.1-116.3 of the Code of Virginia are 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 that may, according to the then current guidelines of the Centers for Disease Control and Prevention, 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 that may, according to the then current guidelines of the Centers for Disease Control and Prevention, 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, *salaried or volunteer firefighter, paramedic or emergency medical technician* is directly exposed to body fluids of a person in a manner which that may, according to the then current guidelines of the Centers for Disease Control and Prevention, 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~~ person 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, *salaried or volunteer firefighter, paramedic or emergency medical technician* in a manner which that may, according to the then current guidelines of the Centers for Disease Control and Prevention, transmit human immunodeficiency virus or hepatitis B or C viruses, the ~~law-enforcement officer~~ 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. The law-enforcement officer, *salaried or volunteer firefighter, paramedic or emergency medical technician* shall also be deemed to have consented to the release of such test results to the person who was exposed.

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

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60 adult or youth correctional facility, or any state or local law-enforcement agency, or any agency or  
61 department under the direction and control of the Commonwealth or any local governing body that  
62 employs persons who have law-enforcement authority.

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

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

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

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

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

104 § 32.1-116.3. Reporting of communicable diseases; definitions.

105 A. For the purposes of this section:

106 "Communicable disease of public health threat" means an illness of public health significance, as  
107 determined by the State Health Commissioner in accordance with regulations of the Board of Health,  
108 caused by a specific or suspected infectious agent that may be reasonably expected or is known to be  
109 readily transmitted directly or indirectly from one individual or person to another or to uninfected  
110 persons through airborne or nonairborne means and has been found to create a risk of death or  
111 significant injury or impairment; this definition shall not, however, be construed to include human  
112 immunodeficiency viruses or tuberculosis, unless used as a bioterrorism weapon. "Individual" shall  
113 include any companion animal.

114 "Communicable diseases" means any airborne infection or disease, including, but not limited to,  
115 tuberculosis, measles, certain meningococcal infections, mumps, chicken pox and Hemophilus Influenzae  
116 Type b, and those transmitted by contact with blood or other human body fluids, including, but not  
117 limited to, human immunodeficiency virus, Hepatitis B and Non-A, Non-B Hepatitis.

118 B. Every licensed health care facility which transfers or receives patients via emergency medical  
119 services ambulances or mobile intensive care units shall notify the emergency medical services agencies  
120 providing such patient transport of the name and telephone number of the individual who is the infection  
121 control practitioner with the responsibility of investigating exposure to infectious diseases in the facility.

122 Every licensed emergency medical services agency established in the Commonwealth shall notify all  
 123 facilities to which they transport patients or from which they transfer patients of the names and  
 124 telephone numbers of the members, not to exceed three persons, who have been appointed to serve as  
 125 the ~~communicable disease liaison~~*exposure control* officers. Every licensed emergency medical services  
 126 agency shall implement universal precautions and shall ensure that these precautions are appropriately  
 127 followed and enforced.

128 C. Upon requesting any licensed emergency medical services agency to transfer ~~(i)~~ a patient who is  
 129 known to be positive for or who suffers from any communicable disease ~~which, in the judgment of the~~  
 130 ~~physician authorizing the transfer or the facility's infection control practitioner, presents any risk to the~~  
 131 ~~transporting emergency medical services personnel or to patients who may be subsequently transported~~  
 132 ~~in the same vehicle, or (ii) a patient who is known to be subject to an order of quarantine or an order of~~  
 133 ~~isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of this title, the transferring facility~~  
 134 shall inform the attendant-in-charge of the transferring crew of the general condition of the patient and  
 135 the types of precautions to be taken to prevent the spread of the disease. The identity of the patient shall  
 136 be confidential.

137 D. If any firefighter, law-enforcement officer, emergency medical services provider or paramedic has  
 138 an exposure of blood or body fluid to mucous membrane, non-intact skin, or a contaminated needlestick  
 139 injury, his ~~communicable disease liaison~~ *exposure control* officer shall be notified, a report completed  
 140 and the infection control practitioner at the receiving facility notified.

141 E. If, during the course of medical care and treatment, any physician determines that a patient who  
 142 was transported to a receiving facility by any licensed emergency medical services agency (i) is positive  
 143 for or has been diagnosed as suffering from an airborne infectious disease or (ii) is subject to an order  
 144 of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of this  
 145 title, then the infection control practitioner in the facility shall immediately notify the ~~communicable~~  
 146 ~~disease liaison~~*exposure control* officer who represents the transporting emergency medical services  
 147 agency of the name of the patient, and the date and time of the patient's admittance to the facility. The  
 148 ~~communicable disease liaison~~*exposure control* officer for the transporting emergency medical services  
 149 agency shall investigate the incident to determine if any exposure of emergency medical services  
 150 personnel or other emergency personnel occurred. The identity of the patient and all personnel involved  
 151 in any such investigation shall be confidential.

152 F. If any firefighter, law-enforcement officer, emergency medical services provider or paramedic shall  
 153 be exposed to a communicable disease, the ~~communicable disease liaison~~*exposure control* officer shall  
 154 immediately notify the infection control practitioner of the receiving facility. The infection control  
 155 practitioner of the facility shall conduct an investigation and provide information concerning the extent  
 156 and severity of the exposure and the recommended course of action to the ~~communicable disease~~  
 157 ~~liaison~~*exposure control* officer of the transporting agency. ~~This section shall not be construed to create a~~  
 158 ~~duty by the receiving facility to perform any test or tests beyond those necessary for the medical~~  
 159 ~~management of the patient delivered by an emergency medical services agency to the receiving facility~~  
 160 ~~nor shall it affect the operation of the provisions of § 32.1-45.1.~~

161 G. Any person requesting or requiring any employee of a public safety agency as defined in  
 162 subsection J of § 32.1-45.2 to arrest, transfer, or otherwise exercise custodial supervision over an  
 163 individual known to the requesting person (i) to be infected with any communicable disease or (ii) to be  
 164 subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.)  
 165 of Chapter 2 of this title shall inform such public safety agency employee of a potential risk of exposure  
 166 to a communicable disease.

167 H. Local or state correctional facilities which transfer patients known to have a communicable  
 168 disease or to be subject to an order of quarantine or an order of isolation pursuant to Article 3.02  
 169 (§ 32.1-48.05 et seq.) of Chapter 2 of this title shall notify the emergency medical services agency  
 170 providing transportation services of a potential risk of exposure to a communicable disease, including a  
 171 communicable disease of public health threat. For the purposes of this section, the chief medical person  
 172 at a local or state correctional facility or the facility director or his designee shall be responsible for  
 173 providing such information to the transporting agency.

174 I. Any person who, as a result of this provision, becomes aware of the identity or condition of a  
 175 person known to be (i) positive for or to suffer from any communicable disease, or to have suffered  
 176 exposure to a communicable disease or (ii) subject to an order of quarantine or an order of isolation  
 177 pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of this title, shall keep such information  
 178 confidential, except as expressly authorized by this provision.

179 J. No person known to be (i) positive for or to suffer from any communicable disease, including any  
 180 communicable disease of public health threat, or (ii) subject to an order of quarantine or an order of  
 181 isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of this title, shall be refused  
 182 transportation or service for that reason by an emergency medical services, law-enforcement, or public

**183** safety agency.