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SENATE BILL NO. 1034

Offered January 14, 2009

Prefiled January 13, 2009

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

Patron—Hanger

Referred to Committee on Education and Health

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~~*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 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 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~~*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 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

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

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

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

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

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

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