

VIRGINIA ACTS OF ASSEMBLY -- 2017 SESSION

CHAPTER 178

An Act to amend and reenact § 32.1-36.1 of the Code of Virginia, relating to confidentiality of tests for human immunodeficiency virus; release of information.

[H 1840]

Approved February 23, 2017

Be it enacted by the General Assembly of Virginia:

1. That § 32.1-36.1 of the Code of Virginia is amended and reenacted as follows:

§ 32.1-36.1. Confidentiality of test for human immunodeficiency virus; civil penalty; individual action for damages or penalty.

A. The results of every test to determine infection with human immunodeficiency virus shall be confidential. Such information may ~~only~~ be released *only* to the following persons:

1. The subject of the test or his legally authorized representative.
2. Any person designated in a release signed by the subject of the test or his legally authorized representative.
3. The Department of Health.
4. Health care providers for purposes of consultation or providing care and treatment to the person who was the subject of the test or providing care and treatment to a child of a woman who, at the time of such child's birth, was known to be infected with human immunodeficiency virus.
5. Health care facility staff committees which monitor, evaluate, or review programs or services.
6. Medical or epidemiological researchers for use as statistical data only.
7. Any person allowed access to such information by a court order.
8. Any facility which procures, processes, distributes or uses blood, other body fluids, tissues or organs.
9. Any person authorized by law to receive such information.
10. The parents or other legal custodian of the subject of the test if the subject is a minor.
11. The spouse of the subject of the test.
12. Departments of health located outside the Commonwealth by the Virginia Department of Health for the purposes of disease surveillance and investigation *persons or entities permitted or authorized to obtain protected health information under any applicable federal or state law.*

B. In any action brought under this section, if the court finds that a person has willfully or through gross negligence made an unauthorized disclosure in violation of this section, the Attorney General, any attorney for the Commonwealth, or any attorney for the county, city or town in which the violation occurred may recover for the Literary Fund, upon petition to the court, a civil penalty of not more than \$5,000 per violation.

C. Any person who is the subject of an unauthorized disclosure pursuant to this section shall be entitled to initiate an action to recover actual damages, if any, or \$100, whichever is greater. In addition, such person may also be awarded reasonable attorney's fees and court costs.

D. This section shall not be deemed to create any duty on the part of any person who receives such test results, where none exists otherwise, to release the results to a person listed herein as authorized to receive them.