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HOUSE BILL NO. 2097

Offered January 11, 2017

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A BILL to amend and reenact §§ 32.1-45.1, 32.1-48.015, 32.1-116.3 of the Code of Virginia and to repeal § 32.1-45.2 of the Code of Virginia, relating to testing for infection with human immunodeficiency virus or hepatitis B or C virus; order of magistrate.

Patrons—Price, Boysko, Kory, Lindsey, Plum, Simon and Torian

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-45.1, 32.1-48.015, 32.1-116.3 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 that may, according to the then current guidelines of the Centers for Disease Control and Prevention, transmit human immunodeficiency virus or the hepatitis B or C viruses virus, 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 the hepatitis B or C viruses virus. 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 that may, according to the then current guidelines of the Centers for Disease Control and Prevention, transmit human immunodeficiency virus or the hepatitis B or C viruses virus, 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 the hepatitis B or C viruses virus. 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 Behavioral Health and Developmental 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, 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 or other employee of a law enforcement agency, salaried or volunteer firefighter, or salaried or volunteer emergency medical services provider is directly exposed to body fluids of a person in a manner that may, according to the then current guidelines of the Centers for Disease Control and Prevention, transmit human immunodeficiency virus or the hepatitis B or C viruses virus, 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 the hepatitis B or C viruses virus. Such person shall also be deemed to have consented to the release of such test results to the person who was exposed.

F. Whenever a person is directly exposed to the body fluids of a law-enforcement officer or other employee of a law enforcement agency, salaried or volunteer firefighter, or salaried or volunteer emergency medical services provider in a manner that may, according to the then current guidelines of the Centers for Disease Control and Prevention, transmit human immunodeficiency virus or the hepatitis B or C viruses virus, 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 the hepatitis B or C viruses virus. The law-enforcement officer or other employee of a law enforcement agency, salaried or

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59 volunteer firefighter, or salaried or volunteer emergency medical services provider shall also be deemed  
60 to have consented to the release of such test results to the person who was exposed.

61 G. For the purposes of this section, "law-enforcement officer" means a person who is both (i)  
62 engaged in his public duty at the time of such exposure and *is (i) a salaried or volunteer firefighter or*  
63 *salaried or volunteer emergency medical services provider or (ii) employed by any sheriff's office, any*  
64 *adult or youth correctional facility, or any state or local law-enforcement agency, the Department of*  
65 *Forensic Science, or any agency or department under the direction and control of the Commonwealth or*  
66 *any local governing body that employs persons who have law-enforcement authority.*

67 H. Whenever any school board employee is directly exposed to body fluids of any person in a  
68 manner that may, according to the then current guidelines of the Centers for Disease Control and  
69 Prevention, transmit human immunodeficiency virus or *the hepatitis B or C viruses virus*, the person  
70 whose body fluids were involved in the exposure shall be deemed to have consented to testing for  
71 infection with human immunodeficiency virus or *the hepatitis B or C viruses virus*. Such person shall  
72 also be deemed to have consented to the release of such test results to the school board employee who  
73 was exposed. If the person whose blood specimen is sought for testing is a minor, the parent, guardian,  
74 or person standing in loco parentis of such minor shall be notified prior to initiating such testing. In  
75 other than emergency situations, it shall be the responsibility of the school board employee to inform the  
76 person of this provision prior to the contact that creates a risk of such exposure.

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

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

87 K. For purposes of this section, if the person whose blood specimen is sought for testing is a minor,  
88 and that minor refuses to provide such specimen, consent for obtaining such specimen shall be obtained  
89 from the parent, guardian, or person standing in loco parentis of such minor prior to initiating such  
90 testing. If the parent or guardian or person standing in loco parentis withholds such consent, or is not  
91 reasonably available, the person potentially exposed to the human immunodeficiency virus or *the*  
92 *hepatitis B or C viruses virus*, or the employer of such person, may petition the juvenile and domestic  
93 relations district court in the county or city where the minor 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 minor to  
97 provide a blood specimen or to submit to testing and to disclose the test results in accordance with this  
98 section.

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

112 **§ 32.1-48.015. Authorization to disclose health records.**

113 A. The provisions of this article are hereby declared to be necessary to prevent serious harm and  
114 serious threats to the health and safety of individuals and the public in Virginia for purposes of  
115 authorizing the State Health Commissioner or his designee to examine and review any health records of  
116 any person or persons subject to any order of quarantine or order of isolation pursuant to this article and  
117 the regulations of the Department of Health and Human Services promulgated in compliance with the  
118 Health Insurance Portability and Accountability Act of 1996, as amended. The State Health  
119 Commissioner shall authorize any designee in writing to so examine and review any health records of  
120 any person or persons subject to any order of quarantine or order of isolation pursuant to this article.

121 B. Pursuant to the regulations concerning patient privacy promulgated by the federal Department of  
 122 Health and Human Services, covered entities may disclose protected health information to the State  
 123 Health Commissioner or his designee without obtaining consent or authorization for such disclosure  
 124 from the person who is the subject of the records. Such protected health information shall be used to  
 125 facilitate the health care of any person or persons who are subject to an order of quarantine or an order  
 126 of isolation. The State Health Commissioner or his designee shall only redisclose such protected health  
 127 information in compliance with the aforementioned federal regulations. Further, the protected health  
 128 information disclosed to the State Health Commissioner or his designee shall be held confidential and  
 129 shall not be disclosed pursuant to the provisions of subdivision 17 of § 2.2-3705.5.

130 C. Pursuant to subsection G of § 32.1-116.3, any person requesting or requiring any employee of a  
 131 ~~public safety agency as defined in subsection J of § 32.1-45.2~~ person employed by any sheriff's office,  
 132 any adult or youth correctional facility, any state or local law-enforcement agency, or any agency or  
 133 department under the direction and control of the Commonwealth or any local governing body that  
 134 employs persons who have law-enforcement authority to arrest, transfer, or otherwise exercise custodial  
 135 supervision over an individual known to the requesting person (i) to be infected with any communicable  
 136 disease or (ii) to be subject to an order of quarantine or an order of isolation pursuant to Article 3.02  
 137 (§ 32.1-48.05 et seq.) of Chapter 2, including any fire marshal, shall inform such employee of a public  
 138 safety agency of the potential risk of exposure to a communicable disease.

139 **§ 32.1-116.3. Reporting of communicable diseases; definitions.**

140 A. For the purposes of this section:

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

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

153 B. Every licensed health care facility that transfers or receives patients via emergency medical  
 154 services vehicles shall notify the emergency medical services agencies providing such patient transport  
 155 of the name and telephone number of the individual who is the infection control practitioner with the  
 156 responsibility of investigating exposure to infectious diseases in the facility.

157 Every emergency medical services agency that holds a valid license issued by the Commissioner and  
 158 that is established in the Commonwealth shall notify all facilities to which it transports patients or from  
 159 which it transfers patients of the names and telephone numbers of the members, not to exceed three  
 160 persons, who have been appointed to serve as the exposure control officers. Every emergency medical  
 161 services agency that holds a valid license issued by the Commissioner shall implement universal  
 162 precautions and shall ensure that these precautions are appropriately followed and enforced.

163 C. Upon requesting any emergency medical services agency that holds a valid license issued by the  
 164 Commissioner to transfer a patient who is known to be positive for or who suffers from any  
 165 communicable disease, the transferring facility shall inform the attendant-in-charge of the transferring  
 166 crew of the general condition of the patient and the types of precautions to be taken to prevent the  
 167 spread of the disease. The identity of the patient shall be confidential.

168 D. If any firefighter, law-enforcement officer, or emergency medical services provider has an  
 169 exposure of blood or body fluid to mucous membrane or non-intact skin or a contaminated needlestick  
 170 injury, his exposure control officer shall be notified, a report completed, and the infection control  
 171 practitioner at the receiving facility notified.

172 E. If, during the course of medical care and treatment, any physician determines that a patient who  
 173 was transported to a receiving facility by any emergency medical services agency that holds a valid  
 174 license issued by the Commissioner (i) is positive for or has been diagnosed as suffering from an  
 175 airborne infectious disease or (ii) is subject to an order of quarantine or an order of isolation pursuant to  
 176 Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2, then the infection control practitioner in the facility  
 177 shall immediately notify the exposure control officer who represents the transporting emergency medical  
 178 services agency of the name of the patient and the date and time of the patient's admittance to the  
 179 facility. The exposure control officer for the transporting emergency medical services agency shall  
 180 investigate the incident to determine if any exposure of emergency medical services personnel or other  
 181 emergency personnel occurred. The identity of the patient and all personnel involved in any such

182 investigation shall be confidential.

183 F. If any firefighter, law-enforcement officer, or emergency medical services provider is exposed to a  
184 communicable disease, the exposure control officer shall immediately notify the infection control  
185 practitioner of the receiving facility. The infection control practitioner of the facility shall conduct an  
186 investigation and provide information concerning the extent and severity of the exposure and the  
187 recommended course of action to the exposure control officer of the transporting agency.

188 G. Any person requesting or requiring any ~~employee of a public safety agency as defined in~~  
189 ~~subsection J of § 32.1-45.2~~ *person employed by any sheriff's office, any adult or youth correctional*  
190 *facility, any state or local law-enforcement agency, or any agency or department under the direction*  
191 *and control of the Commonwealth or any local governing body that employs persons who have*  
192 *law-enforcement authority to arrest, transfer, or otherwise exercise custodial supervision over an*  
193 individual known to the requesting person (i) to be infected with any communicable disease or (ii) to be  
194 subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.)  
195 of Chapter 2 shall inform such public safety agency employee of a potential risk of exposure to a  
196 communicable disease.

197 H. Local or state correctional facilities which transfer patients known to have a communicable  
198 disease or to be subject to an order of quarantine or an order of isolation pursuant to Article 3.02  
199 (§ 32.1-48.05 et seq.) of Chapter 2 shall notify the emergency medical services agency providing  
200 transportation services of a potential risk of exposure to a communicable disease, including a  
201 communicable disease of public health threat. For the purposes of this section, the chief medical person  
202 at a local or state correctional facility or the facility director or his designee shall be responsible for  
203 providing such information to the transporting agency.

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

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

213 **2. That § 32.1-45.2 of the Code of Virginia is repealed.**