

18102791D

HOUSE BILL NO. 1033

Offered January 10, 2018

Prefiled January 9, 2018

A BILL to amend and reenact §§ 32.1-45.1, 32.1-48.015, and 32.1-116.3 of the Code of Virginia, and to repeal § 32.1-45.2 of the Code of Virginia, relating to deemed consent to testing of bodily fluids.

Patrons—Price, Bourne and Boysko

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-45.1, 32.1-48.015, and 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, salaried or volunteer firefighter, ~~or~~ salaried or volunteer emergency medical services provider, *or other employee of a law-enforcement agency engaged in the course of his normal employment* 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, salaried or volunteer firefighter, ~~or~~ salaried or volunteer emergency medical services provider, *or other employee of a public safety agency engaged in the course of his normal employment* 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, salaried or volunteer firefighter, ~~or~~ salaried or volunteer emergency medical services provider, *or other employee of*

INTRODUCED

HB1033

59 a public safety agency shall also be deemed to have consented to the release of such test results to the
60 person who was exposed.

61 G. For the purposes of this section, "~~law-enforcement officer~~"

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

67 "*Public safety agency*" means any sheriff's office, adult youth or correctional facility, state or local
68 law-enforcement agency, or fire safety organization; the Department of Forensic Science; or any agency
69 or department that employs persons who have law-enforcement authority and that is under the direction
70 and control of the Commonwealth or any local governing body.

71 H. Whenever any school board employee is directly exposed to body fluids of any person 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 the hepatitis B or C ~~viruses~~ virus, the person
74 whose body fluids were involved in the exposure shall be deemed to have consented to testing for
75 infection with human immunodeficiency virus or the hepatitis B or C ~~viruses~~ virus. Such person shall
76 also be deemed to have consented to the release of such test results to the school board employee who
77 was exposed. If the person whose blood specimen is sought for testing is a minor, the parent, guardian,
78 or person standing in loco parentis of such minor shall be notified prior to initiating such testing. In
79 other than emergency situations, it shall be the responsibility of the school board employee to inform the
80 person of this provision prior to the contact that creates a risk of such exposure.

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

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

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

103 L. Except as provided in subsection K, if the person whose blood specimen is sought for testing
104 refuses to provide such specimen, any person potentially exposed to the human immunodeficiency virus
105 or the hepatitis B or C ~~viruses~~ virus, or the employer of such person, may petition the ~~general district~~
106 ~~court of a magistrate~~ in the county or city in which the person whose specimen is sought resides or
107 resided, or, in the case of a nonresident, the county or city where the health care provider,
108 law-enforcement agency or school board has its principal office or, in the case of a health care provider
109 rendering emergency care pursuant to subsection D, the county or city where the exposure occurred, for
110 an order requiring the person to provide a blood specimen or to submit to testing and to disclose the test
111 results in accordance with this section. ~~At any hearing before the court, the person whose specimen is~~
112 ~~sought or his counsel may appear.~~ The ~~court~~ magistrate shall be advised by the Commissioner or his
113 designee prior to entering any testing order. ~~If the magistrate determines by a preponderance of the~~
114 ~~evidence that an exposure incident has occurred, he shall issue a testing order.~~ If a testing order is
115 issued, both the petitioner and the person from whom the blood specimen is sought shall receive
116 counseling and opportunity for face-to-face disclosure of any test results by a licensed practitioner or
117 trained counselor. ~~Any person who is the subject of a testing order may appeal such order within 24~~
118 ~~hours of receiving notice of the order by filing a petition with the general district court.~~

119 M. No specimen obtained pursuant to this section shall be tested for any purpose other than that
120 provided for in this section, nor shall results of any testing pursuant to this section be used as evidence

in any criminal matter.

§ 32.1-48.015. Authorization to disclose health records.

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

B. Pursuant to the regulations concerning patient privacy promulgated by the federal Department of Health and Human Services, covered entities may disclose protected health information to the State Health Commissioner or his designee without obtaining consent or authorization for such disclosure from the person who is the subject of the records. Such protected health information shall be used to facilitate the health care of any person or persons who are subject to an order of quarantine or an order of isolation. The State Health Commissioner or his designee shall only redisclose such protected health information in compliance with the aforementioned federal regulations. Further, the protected health information disclosed to the State Health Commissioner or his designee shall be held confidential and shall not be disclosed pursuant to the provisions of subdivision 12 of § 2.2-3705.5.

C. Pursuant to subsection G of § 32.1-116.3, any person requesting or requiring any employee of a public safety agency as defined in ~~subsection J of § 32.1-45.2~~ § 32.1-45.1 to arrest, transfer, or otherwise exercise custodial supervision over an individual known to the requesting person (i) to be infected with any communicable disease or (ii) to be subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 shall inform such employee of a public safety agency of the potential risk of exposure to a communicable disease.

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

A. For the purposes of this section:

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

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

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

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

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

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

E. If, during the course of medical care and treatment, any physician determines that a patient who was transported to a receiving facility by any emergency medical services agency that holds a valid license issued by the Commissioner (i) is positive for or has been diagnosed as suffering from an

182 airborne infectious disease or (ii) is subject to an order of quarantine or an order of isolation pursuant to
183 Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2, then the infection control practitioner in the facility
184 shall immediately notify the exposure control officer who represents the transporting emergency medical
185 services agency of the name of the patient and the date and time of the patient's admittance to the
186 facility. The exposure control officer for the transporting emergency medical services agency shall
187 investigate the incident to determine if any exposure of emergency medical services personnel or other
188 emergency personnel occurred. The identity of the patient and all personnel involved in any such
189 investigation shall be confidential.

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

195 G. Any person requesting or requiring any employee of a public safety agency as defined in
196 subsection J of § ~~32.1-45.2~~ § 32.1-45.1 to arrest, transfer, or otherwise exercise custodial supervision
197 over an individual known to the requesting person (i) to be infected with any communicable disease or
198 (ii) to be subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05
199 et seq.) of Chapter 2 shall inform such public safety agency employee of a potential risk of exposure to
200 a communicable disease.

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

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

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

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