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HOUSE BILL NO. 2174

House Amendments in [] — January 29, 1997

A BILL to amend and reenact § 32.1-45.2 of the Code of Virginia, relating to testing of certain persons for blood-borne pathogens.

Patrons—Bryant, Abbitt, Crouch and Putney; Senators: Hawkins, Howell and Newman

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:**1. That § 32.1-45.2 of the Code of Virginia is amended and reenacted as follows:**

§ 32.1-45.2. Public safety employees; testing for blood-borne pathogens; procedure available for certain citizens; definitions.

A. If, in the course of employment, an employee of a public safety agency is involved in a possible exposure prone incident, the employee shall immediately, or as soon thereafter as practicable, notify the agency of the incident in accordance with the agency's procedures for reporting workplace accidents.

B. If, after reviewing the facts of the possible exposure prone incident with the employee and after medical consultation, the agency concludes that it is reasonable to believe that an exposure prone incident may have occurred, (i) the agency shall request the person whose body fluids were involved to give informed consent, as provided in § 32.1-37.2, to submit to testing for hepatitis B virus and human immunodeficiency virus and to authorize disclosure of the test results or (ii) if the person is deceased, the agency shall request the custodian of the remains to preserve a specimen of blood and shall request the decedent's next of kin to provide informed consent, as provided in § 32.1-37.2, to such testing and to authorize disclosure of the test results.

C. If a person is involved in a possible exposure prone incident involving the body fluids of an employee of a public safety agency, the person may request the agency to review the facts of the possible exposure prone incident for purposes of obtaining the employee's informed consent, as provided in § 32.1-37.2, to test for hepatitis B virus and human immunodeficiency virus and to authorize disclosure of the test results. If, after reviewing the facts and after medical consultation, the agency concludes it is reasonable to believe an exposure prone incident involving the person and the employee may have occurred, (i) the agency shall request the employee whose body fluids were involved to give informed consent to submit to testing for hepatitis B virus and human immunodeficiency virus and to authorize disclosure of the test results or (ii) if the employee is deceased, the agency shall request the custodian of the remains to preserve a specimen of blood and shall request the decedent's next of kin to provide informed consent, as provided in § 32.1-37.2, to such testing and to authorize disclosure of the test results.

D. If informed consent is refused under subsection B of this section, the public safety agency or the employee may petition the general district court of the city or county in which the person resides or resided, or in the case of a nonresident, the city or county of the public safety agency's principal office, to determine whether an exposure prone incident has occurred and to order testing and disclosure of the test results.

If informed consent is refused under subsection C of this section, the person involved in the possible exposure prone incident may petition the general district court of the city or county of the public safety agency's principal office to determine whether an exposure prone incident has occurred and to order testing and disclosure of the test results.

E. If the court finds by a preponderance of the evidence that an exposure prone incident has occurred, it shall order testing for hepatitis B virus and human immunodeficiency virus and disclosure of the test results. The court shall be advised by the Commissioner or his designee in making this finding. The hearing shall be held in camera as soon as practicable after the petition is filed. The record shall be sealed.

F. A party may appeal an order of the general district court to the circuit court of the same jurisdiction within ten days from the date of the order. Any such appeal shall be de novo, in camera, and shall be heard as soon as possible by the circuit court. The circuit court shall be advised by the Commissioner or his designee. The record shall be sealed. The order of the circuit court shall be final and nonappealable.

G. Disclosure of any test results provided by this section shall be made to the district health director of the jurisdiction in which the petition was brought or the district in which the person or employee was tested. The district health director or his designee shall inform the parties of the test results and counsel them in accordance with subsection B of § 32.1-37.2.

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60 H. The results of the tests shall be confidential as provided in § 32.1-36.1.

61 I. No person known or suspected to be positive for infection with hepatitis B virus or human
62 immunodeficiency virus shall be refused services for that reason by any public safety agency personnel.

63 J. [*Whenever any victim of or witness to a crime or any person providing assistance to an*
64 *employee of a public safety agency is involved in a possible exposure prone incident as a result of the*
65 *specific crime or specific circumstances involved in the assistance, an arresting officer or any public*
66 *safety employee who has been assisted by such person shall act as the public safety employee involved*
67 *in a possible exposure prone incident for the purpose of implementing the procedures set forth in this*
68 *section on behalf of such possibly exposed victim of or witness to the specific crime or the person*
69 *providing assistance to an employee of a public safety agency. For purposes of this section and for no*
70 *other purpose, the term "employee" shall include any person providing assistance to a person employed*
71 *by a public safety agency in a possible exposure prone incident as a result of the specific crime or*
72 *specific circumstances involved in the assistance.]*

73 K. This section shall not be deemed to create any duty on the part of any person where none exists
74 otherwise, and a cause of action shall not arise from any failure to request consent or to consent to
75 testing under this section. The remedies available under this section shall be exclusive.

76 J. L. For the purposes of this section, the following terms shall apply:

77 "Exposure prone incident" means a direct exposure to body fluids of another person in a manner
78 which may, according to the then current guidelines of the Centers for Disease Control, transmit
79 hepatitis B virus or human immunodeficiency virus and which occurred during the commission of a
80 criminal act, during the performance of emergency procedures, care or assistance, or in the course of
81 public safety or law-enforcement duties. "Public safety agency" means any sheriff's office and any adult
82 or youth correctional, law-enforcement, fire safety organization or any agency or department that
83 employs persons who have law-enforcement authority and which is under the direction and control of
84 the Commonwealth or any local governing body.