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## HOUSE BILL NO. 664

Offered January 8, 2020

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A *BILL to amend and reenact §§ 32.1-45.1, 32.1-45.2, 32.1-48.015, and 32.1-116.3 of the Code of Virginia, relating to exposure to decedent's body fluids; testing.*

Patron—Bell

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 32.1-45.1, 32.1-45.2, 32.1-48.015, and 32.1-116.3 of the Code of Virginia are 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 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 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 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 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 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 person who was exposed. *If the person whose body fluids were involved in the exposure is deceased, the decedent's next of kin shall be deemed to have consented to testing of the decedent's blood for infection with human immunodeficiency virus or hepatitis B or C viruses and 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 in a manner 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. The law-enforcement officer, salaried or volunteer

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HB664

59 firefighter, or salaried or volunteer emergency medical services provider shall also be deemed to have  
60 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 (ii) employed by any sheriff's office, any  
63 adult or youth correctional facility, or any state or local law-enforcement agency, or any agency or  
64 department under the direction and control of the Commonwealth or any local governing body that  
65 employs persons who have law-enforcement authority.

66 H. Whenever any school board employee is directly exposed to body fluids of any person in a  
67 manner that may, according to the then current guidelines of the Centers for Disease Control and  
68 Prevention, transmit human immunodeficiency virus or hepatitis B or C viruses, the person whose body  
69 fluids were involved in the exposure shall be deemed to have consented to testing for infection with  
70 human immunodeficiency virus or hepatitis B or C viruses. Such person shall also be deemed to have  
71 consented to the release of such test results to the school board employee who was exposed.

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

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

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

92 L. Except as provided in subsection K, if the person whose blood specimen is sought for testing  
93 refuses to provide such specimen, any person identified by this section who was potentially exposed to  
94 the human immunodeficiency virus or the hepatitis B or C viruses in the manner described by this  
95 section, or the employer of such person, may petition, on a form to be provided by the Office of the  
96 Executive Secretary of the Supreme Court of Virginia, the general district court of the county or city in  
97 which the person whose specimen is sought resides or resided, or, in the case of a nonresident, the  
98 county or city where the health care provider, law-enforcement agency or school board has its principal  
99 office or, in the case of a health care provider rendering emergency care pursuant to subsection D, the  
100 county or city where the exposure occurred, for an order requiring the person to provide a blood  
101 specimen or to submit to testing and to disclose the test results in accordance with this section. A  
102 hearing on such a petition shall be given precedence on the docket so as to be heard by the court within  
103 48 hours of the filing of the petition, or, if the court is closed during such time period, such petition  
104 shall be heard on the next day that the court is in session. A copy of the petition, which shall specify  
105 the date and location of the hearing, shall be provided to the person whose specimen is sought. At any  
106 hearing before the court, the person whose specimen is sought or his counsel may appear. The court  
107 may be advised by the Commissioner or his designee prior to entering any testing order. If the general  
108 district court determines that there is probable cause to believe that a person identified by this section  
109 has been exposed in the manner prescribed by this section, the court shall issue an order requiring the  
110 person whose bodily fluids were involved in the exposure to provide a blood specimen or to submit to  
111 testing and to disclose the test results in accordance with this section. If a testing order is issued, both  
112 the petitioner and the person from whom the blood specimen is sought shall receive counseling and  
113 opportunity for face-to-face disclosure of any test results by a licensed practitioner or trained counselor.

114 M. Any person who is subject to a testing order may appeal the order of the general district court to  
115 the circuit court of the same jurisdiction within 10 days of receiving notice of the order. Any hearing  
116 conducted pursuant to this subsection shall be held in camera as soon as practicable. The record shall be  
117 sealed. The order of the circuit court shall be final and nonappealable.

118 N. No specimen obtained pursuant to this section shall be tested for any purpose other than for the  
119 purpose provided for in this section, nor shall the specimen or the results of any testing pursuant to this  
120 section be used for any purpose in any criminal matter or investigation. Any violation of this subsection

shall constitute reversible error in any criminal case in which the specimen or results were used.

**§ 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, *and the person whose body fluids were involved in the exposure prone incident is deceased, the agency shall (i) immediately contact the custodian of the remains and request that a specimen of blood be preserved for testing and (ii) contact the next of kin of the decedent and inform the next of kin that the specimen will be tested for hepatitis B or C viruses and human immunodeficiency virus and the results of such testing released to the person who was exposed.*

*C. 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 and the person whose body fluids were involved in the exposure prone incident is alive, the agency shall request the person whose body fluids were involved to submit to testing for hepatitis B or C virus and human immunodeficiency virus as provided in § 32.1-37.2 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 consent, as provided in § 32.1-37.2, to such testing and to authorize disclosure of the test results.*

~~C.~~ D. 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 consent to test for hepatitis B or C virus and human immunodeficiency virus as provided in § 32.1-37.2 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 consent to submit to testing for hepatitis B or C 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 consent, as provided in § 32.1-37.2, to such testing and to authorize disclosure of the test results.

~~D.~~ E. If consent is refused under subsection B of this section C, 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 consent is refused under subsection C of this section D, 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.~~ F. If the court finds by a preponderance of the evidence that an exposure prone incident has occurred, it shall order testing for hepatitis B or C 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.~~ G. 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.~~ H. 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 C of § 32.1-37.2.

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

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

~~J.~~ K. For the purpose of this section and for no other purpose, the term "employee" shall include: (i) any person providing assistance to a person employed by a public safety agency who is directly affected by a possible exposure prone incident as a result of the specific crime or specific circumstances involved

182 in the assistance and (ii) any victim of or witness to a crime who is directly affected by a possible  
183 exposure prone incident as a result of the specific crime.

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

187 L. M. For the purposes of this section, the following terms shall apply:

188 "Exposure prone incident" means a direct exposure to body fluids of another person in a manner  
189 which may, according to the then current guidelines of the Centers for Disease Control and Prevention,  
190 transmit hepatitis B or C virus or human immunodeficiency virus and which occurred during the  
191 commission of a criminal act, during the performance of emergency procedures, care or assistance, or in  
192 the course of public safety or law-enforcement duties.

193 "Public safety agency" means any sheriff's office; any adult or youth correctional, law-enforcement,  
194 or fire safety organization; the Department of Forensic Science; or any agency or department that  
195 employs persons who have law-enforcement authority and which is under the direction and control of  
196 the Commonwealth or any local governing body.

197 **§ 32.1-48.015. Authorization to disclose health records.**

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

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

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

221 **§ 32.1-116.3. Reporting of communicable diseases; definitions.**

222 A. For the purposes of this section:

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

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

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

239 Every emergency medical services agency that holds a valid license issued by the Commissioner and  
240 that is established in the Commonwealth shall notify all facilities to which it transports patients or from  
241 which it transfers patients of the names and telephone numbers of the members, not to exceed three  
242 persons, who have been appointed to serve as the exposure control officers. Every emergency medical  
243 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 airborne infectious disease or (ii) is 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, then the infection control practitioner in the facility shall immediately notify the exposure control officer who represents the transporting emergency medical services agency of the name of the patient and the date and time of the patient's admittance to the facility. The exposure control officer for the transporting emergency medical services agency shall investigate the incident to determine if any exposure of emergency medical services personnel or other emergency personnel occurred. The identity of the patient and all personnel involved in any such investigation shall be confidential.

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

G. Any person requesting or requiring any employee of a public safety agency as defined in subsection J M of § 32.1-45.2 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 public safety agency employee of a potential risk of exposure to a communicable disease.

H. Local or state correctional facilities which transfer patients known to have a communicable disease or 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 notify the emergency medical services agency providing transportation services of a potential risk of exposure to a communicable disease, including a communicable disease of public health threat. For the purposes of this section, the chief medical person at a local or state correctional facility or the facility director or his designee shall be responsible for providing such information to the transporting agency.

I. Any person who, as a result of this provision, becomes aware of the identity or condition of a person known to be (i) positive for or to suffer from any communicable disease, or to have suffered exposure to a communicable disease or (ii) 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 keep such information confidential, except as expressly authorized by this provision.

J. No person known to be (i) positive for or to suffer from any communicable disease, including any communicable disease of public health threat, or (ii) 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 be refused transportation or service for that reason by an emergency medical services, law-enforcement, or public safety agency.