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HOUSE BILL NO. 435

Offered January 10, 2024

Prefiled January 8, 2024

A BILL to amend and reenact § 32.1-45.1 of the Code of Virginia, relating to law-enforcement officers; exposure to bodily fluids; petition to the general district court by local attorney for the Commonwealth.

 Patron—Arnold

Referred to Committee on Health and Human Services

Be it enacted by the General Assembly of Virginia:**1. That § 32.1-45.1 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 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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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, *or the local attorney for the Commonwealth in the county or*
96 *city in which the exposure occurred if such exposed person is a law-enforcement officer*, may petition,
97 on a form to be provided by the Office of the Executive Secretary of the Supreme Court of Virginia, the
98 general district court of the county or city in which the person whose specimen is sought resides or
99 resided, or, in the case of a nonresident, the county or city where the health care provider,
100 law-enforcement agency or school board has its principal office or, in the case of a health care provider
101 rendering emergency care pursuant to subsection D, the county or city where the exposure occurred, for
102 an order requiring the person to provide a blood specimen or to submit to testing and to disclose the test
103 results in accordance with this section. A hearing on such a petition shall be given precedence on the
104 docket so as to be heard by the court within 48 hours of the filing of the petition, or, if the court is
105 closed during such time period, such petition shall be heard on the next day that the court is in session.
106 A copy of the petition, which shall specify the date and location of the hearing, shall be provided to the
107 person whose specimen is sought. At any hearing before the court, the person whose specimen is sought
108 or his counsel may appear. The court may be advised by the Commissioner or his designee prior to
109 entering any testing order. If the general district court determines that there is probable cause to believe
110 that a person identified by this section has been exposed in the manner prescribed by this section, the
111 court shall issue an order requiring the person whose bodily fluids were involved in the exposure to
112 provide a blood specimen or to submit to testing and to disclose the test results in accordance with this
113 section. If a testing order is issued, both the petitioner and the person from whom the blood specimen is
114 sought shall receive counseling and opportunity for face-to-face disclosure of any test results by a
115 licensed practitioner or trained counselor.

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

120 N. No specimen obtained pursuant to this section shall be tested for any purpose other than for the

121 purpose provided for in this section, nor shall the specimen or the results of any testing pursuant to this
122 section be used for any purpose in any criminal matter or investigation. Any violation of this subsection
123 shall constitute reversible error in any criminal case in which the specimen or results were used.