

POST-EXPOSURE BLOOD TESTING AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Edward H. Redd

Senate Sponsor: _____

LONG TITLE**General Description:**

This bill modifies provisions regarding disease testing after a significant exposure to blood or contaminated body fluids.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ allows a health care provider to request a blood sample if significantly exposed to a person's bodily fluids in the course of performing the provider's duties;
- ▶ allows a health care provider to request a court order authorizing a blood sample from an individual if, during the course of performing the provider's duties, the provider is significantly exposed to the individual's bodily fluids;
- ▶ clarifies rulemaking authority; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-8-401, as last amended by Laws of Utah 2013, Chapter 114



28 [78B-8-402](#), as last amended by Laws of Utah 2016, Chapter 92

29 [78B-8-403](#), as renumbered and amended by Laws of Utah 2008, Chapter 3

30 [78B-8-404](#), as last amended by Laws of Utah 2013, Chapter 114

31 [78B-8-405](#), as renumbered and amended by Laws of Utah 2008, Chapter 3

33 *Be it enacted by the Legislature of the state of Utah:*

34 Section 1. Section **78B-8-401** is amended to read:

35 **Part 4. Disease Testing for Peace Officers, Health Care Providers, and Volunteers**

36 **78B-8-401. Definitions.**

37 For purposes of this [~~chapter~~] part:

38 (1) "Blood or contaminated body fluids" includes blood, saliva, amniotic fluid,
39 pericardial fluid, peritoneal fluid, pleural fluid, synovial fluid, cerebrospinal fluid, semen, and
40 vaginal secretions, and any body fluid visibly contaminated with blood.

41 (2) "Disease" means Human Immunodeficiency Virus infection, acute or chronic
42 Hepatitis B infection, Hepatitis C infection, and any other infectious disease specifically
43 designated by the Labor Commission, in consultation with the Department of Health, for the
44 purposes of this [~~chapter~~] part.

45 (3) "Emergency services provider" means:

46 (a) an individual certified under Section [26-8a-302](#), a [~~public safety~~] peace officer,
47 local fire department personnel, or personnel employed by the Department of Corrections or by
48 a county jail, who provide prehospital emergency care for an emergency services provider
49 either as an employee or as a volunteer; or

50 (b) an individual who provides for the care, control, support, or transport of a prisoner.

51 (4) "First aid volunteer" means a person who provides voluntary emergency assistance
52 or first aid medical care to an injured person prior to the arrival of an emergency medical
53 services provider or [~~public safety~~] peace officer.

54 (5) "Health care provider" means the same as that term is defined in Section
55 [78B-3-403](#).

56 (6) "Peace officer" means the same as that term is defined in [~~Title 53, Chapter 13,~~
57 ~~Peace Officer Classifications~~] Section [53-1-102](#).

58 [~~(5)~~] (7) "Prisoner" means the same as that term is [~~as~~] defined in Section [76-5-101](#).

59 ~~[(6) "Public safety officer" means a peace officer as]~~

60 ~~[(7)]~~ (8) "Significant exposure" and "significantly exposed" mean:

61 (a) exposure of the body of one person to the blood or body fluids of another person
62 by:

63 (i) percutaneous injury, including a needle stick, cut with a sharp object or instrument,
64 or a wound resulting from a human bite, scratch, or similar force; or

65 (ii) contact with an open wound, mucous membrane, or nonintact skin because of a cut,
66 abrasion, dermatitis, or other damage; or

67 (b) exposure that occurs by any other method of transmission defined by the Labor
68 Commission, in consultation with the Department of Health, as a significant exposure.

69 Section 2. Section **78B-8-402** is amended to read:

70 **78B-8-402. Petition -- Disease testing -- Notice -- Payment for testing.**

71 (1) An emergency services provider or first aid volunteer who is significantly exposed
72 during the course of performing the emergency services provider's duties or during the course
73 of performing emergency assistance or first aid, or a health care provider acting in the course
74 and scope of the health care provider's duties as a health care provider may:

75 (a) request that the person to whom the emergency services provider ~~[or]~~, first aid
76 volunteer, or health care provider was significantly exposed voluntarily submit to testing; or

77 (b) petition the district court or a magistrate for an order requiring that the person to
78 whom the emergency services provider ~~[or]~~, first aid volunteer, or health care provider was
79 significantly exposed submit to testing to determine the presence of a disease, as defined in
80 Section **78B-8-401**, and that the results of that test be disclosed to the petitioner by the
81 Department of Health.

82 (2) (a) A law enforcement agency may submit on behalf of the petitioner ~~Ĥ~~→ **[who is an**
83 **emergency services provider or first aid volunteer]** ←Ĥ by electronic or other means an ex parte
84 request for a warrant ordering a blood draw from the respondent.

85 ~~Ĥ~~→ **[~~(b) A health care provider, or the health care provider's designee, may submit by~~**
86 **electronic or other means an ex parte request for a warrant ordering a blood draw from the**
87 **respondent.]**

88 **[Ĥ] (b) [~~(c)~~] ←Ĥ** The court or magistrate shall issue a warrant ordering the respondent to
89 provide a specimen of the respondent's blood within 24 hours, and that reasonable force may be

used, if necessary, if the court or magistrate finds that:

(i) the petitioner was significantly exposed during the course of performing the petitioner's duties as an emergency services ~~[or] provider~~, first aid ~~[provider]~~ volunteer, or health care provider;

(ii) the respondent has refused consent to the blood draw or is unable to give consent;

(iii) there may not be an opportunity to obtain a sample at a later date; and

(iv) a delay in administering available FDA-approved post-exposure treatment or prophylaxis could result in a lack of effectiveness of the treatment or prophylaxis.

~~H→ [H] (c) [H(a)] ←H~~ The petitioner shall request a person authorized under Section 41-6a-523

perform the blood draw.

~~H→ [H] (d) [H(e)] ←H~~ A sample drawn in accordance with a warrant following an ex parte request shall be sent to the Department of Health for testing.

(3) If a petitioner does not seek or obtain a warrant pursuant to Subsection (2), the petitioner may file a petition with the district court seeking an order to submit to testing and to disclose the results in accordance with ~~[the provisions of]~~ this section.

(4) (a) The petition described in Subsection (3) shall be accompanied by an affidavit in which the petitioner certifies that the petitioner has been significantly exposed to the individual who is the subject of the petition and describes that exposure.

(b) The petitioner shall submit to testing to determine the presence of a disease, when the petition is filed or within three days after the petition is filed.

(5) The petitioner shall cause the petition required under this section to be served on the person who the petitioner is requesting to be tested in a manner that will best preserve the confidentiality of that person.

(6) (a) The court shall set a time for a hearing on the matter within 10 days after the petition is filed and shall give the petitioner and the individual who is the subject of the petition notice of the hearing at least 72 hours prior to the hearing.

(b) The individual who is the subject of the petition shall also be notified that the individual may have an attorney present at the hearing and that the individual's attorney may examine and cross-examine witnesses.

(c) The hearing shall be conducted in camera.

(7) The district court may enter an order requiring that an individual submit to testing,

including blood testing, for a disease if the court finds probable cause to believe:

(a) the petitioner was significantly exposed; and

(b) the exposure occurred during the course of the emergency services provider's duties, ~~[or]~~ the provision of emergency assistance or first aid by a first aid volunteer, or the health care provider acting in the course and scope of the provider's duties as a health care provider.

(8) The court may order that the blood specimen be obtained by the use of reasonable force if the individual who is the subject of the petition is a prisoner.

(9) The court may order that additional, follow-up testing be conducted and that the individual submit to that testing, as it determines to be necessary and appropriate.

(10) The court is not required to order an individual to submit to a test under this section if it finds that there is a substantial reason, relating to the life or health of the individual, not to enter the order.

(11) (a) Upon order of the district court that a person submit to testing for a disease, that person shall report to the designated local health department to have the person's blood drawn within 10 days from the issuance of the order, and thereafter as designated by the court, or be held in contempt of court.

(b) The court shall send the order to the Department of Health and to the local health department ordered to draw the blood.

(c) Notwithstanding the provisions of Section 26-6-27, the Department of Health and a local health department may disclose the test results pursuant to a court order as provided in this section.

(d) Under this section, anonymous testing as provided under Section 26-6-3.5 may not satisfy the requirements of the court order.

(12) The local health department or the Department of Health shall inform the subject of the petition and the petitioner of the results of the test and advise both parties that the test results are confidential. That information shall be maintained as confidential by all parties to the action.

(13) The court, its personnel, the process server, the Department of Health, local health department, and petitioner shall maintain confidentiality of the name and any other identifying information regarding the individual tested and the results of the test as they relate to that

individual, except as specifically authorized by this chapter.

(14) (a) Except as provided in Subsection (14)(b), the petitioner shall remit payment for the drawing of the blood specimen and the analysis of the specimen for the mandatory disease testing to the entity that draws the blood.

(b) If the petitioner is an emergency services provider, the agency that employs the emergency services provider shall remit payment for the drawing of the blood specimen and the analysis of the specimen for the mandatory disease testing to the entity that draws the blood.

(15) The entity that draws the blood shall cause the blood and the payment for the analysis of the specimen to be delivered to the Department of Health for analysis.

(16) If the individual is incarcerated, the incarcerating authority shall either draw the blood specimen or shall pay the expenses of having the individual's blood drawn.

(17) The ex parte request or petition shall be sealed upon filing and made accessible only to the petitioner, the subject of the petition, and their attorneys, upon court order.

Section 3. Section **78B-8-403** is amended to read:

78B-8-403. Confidentiality -- Disclosure -- Penalty.

~~[Any]~~ A person or entity entitled to receive confidential information under this ~~[chapter]~~ part, other than the individual tested and identified in the information, who violates ~~[the provisions of]~~ this ~~[chapter]~~ part by releasing or making public that confidential information, or by otherwise breaching the confidentiality requirements of this ~~[chapter]~~ part, is guilty of a class B misdemeanor.

Section 4. Section **78B-8-404** is amended to read:

78B-8-404. Department authority -- Rules.

The Labor Commission, in consultation with the Department of Health, has authority to establish rules necessary for the purposes of Subsections **78B-8-401**(2) and ~~[(7)]~~ (8).

Section 5. Section **78B-8-405** is amended to read:

78B-8-405. Construction.

Nothing in this part may be construed as prohibiting~~[-(1)]~~ a person from voluntarily consenting to the request of a health care provider~~[-as defined in Section **78B-3-403**]~~ to submit to testing following a significant exposure~~[-or]~~.

~~[(2) a court from considering the petition of a health care provider for an order~~

183 ~~requiring that a person submit to testing to determine the presence of a disease if a significant~~
184 ~~exposure has occurred in connection with the health care provider's treatment of that person.]~~

Legislative Review Note
Office of Legislative Research and General Counsel